



# Contaminated Land and Brownfields Cleanup Programs

Informational  
Paper

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Wisconsin Legislative Fiscal Bureau  
January, 2005



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# Contaminated Land and Brownfields Cleanup Programs

The cleanup of hazardous substances discharges and environmentally contaminated land in Wisconsin is regulated through a combination of federal and state laws. Chapter 292 of the Wisconsin statutes regulates remedial action at sites with discharges of hazardous substances. This generally includes any substance which may cause, or significantly contribute to, an increase in mortality or serious irreversible or incapacitating reversible illness, or which may pose a substantial threat to human health or the environment.

The Department of Natural Resources (DNR) is responsible for implementation of the state's direct response hazardous substances cleanup programs, establishment and administration of cleanup standards for contaminated groundwater and soil and implementation of federal programs in cooperation with the Environmental Protection Agency (EPA). DNR has established, since 1995, a consolidated organizational structure under the Remediation and Redevelopment program, which integrates all aspects of the cleanup process

This paper describes the programs administered by DNR, including program requirements, funding sources and state program expenditures. These federal and state programs are intended to clean up sites with spills, leaks, abandonment and discharge of hazardous substances. The responsible party (the person, company or governmental entity that may be held responsible for the hazardous conditions) or DNR makes an initial assessment of the site, which may be in cooperation with local emergency government or EPA staff, to determine if emergency response is needed. DNR then works with site owners, communities and other governmental entities to attempt to ensure that contaminated soils, debris, groundwater and

surface water are restored to a condition that is safe.

The majority of hazardous substance cleanups underway in Wisconsin are being financed by the owner of a contaminated property or the party who caused the contamination. When the responsible party finances a cleanup, DNR may provide technical review, management and oversight and if necessary, enforcement. When responsible parties do not finance the cleanup, DNR can allocate state and federal funds to do so, initiating cost recovery later, if the site is a priority for use of those funds.

Several statutory changes have been made in recent years to promote the cleanup and development of brownfields sites, which are abandoned, idle or underused industrial or commercial properties, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination. This paper describes the financial assistance programs available to persons who clean up brownfields.

The Department of Commerce (Commerce) and Department of Agriculture, Trade and Consumer Protection (DATCP) also administer contaminated land cleanup programs. For more information, see the Legislative Fiscal Bureau informational papers entitled, "Petroleum Environmental Cleanup Fund Award (PECFA) Program," "Environmental Improvement Fund" (for a description of the land recycling loan program), "State Economic Development Programs Administered by the Department of Commerce" (for a description of the brownfields grant program), and "Agricultural Chemical Fees and Programs" (for a description of the agrichemical cleanup program).

FEDERAL CLEANUP INITIATIVES ADMINISTERED BY DNR

The four key federal contaminated land cleanup programs utilized in Wisconsin are: (a) the Superfund program; (b) the leaking underground storage tank (LUST) program; (c) federal brownfields programs; and (d) Resource Conservation and Recovery Act (RCRA) program to cleanup hazardous waste sites. The programs are administered by DNR's remediation and redevelopment program, except that Commerce administers cleanup at most medium- and low-risk LUST sites.

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**Superfund Cleanup Program**

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The federal Superfund program was established in 1980 by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986. The Superfund program was up for consideration of reauthorization in 1995. While Congress has not reauthorized the program, the program has continued to operate with federal funding primarily from general purpose revenues and cost recoveries. Superfund includes three cleanup components: (a) an emergency response program for sites posing an immediate and substantial danger; (b) a site assessment program to evaluate potential Superfund sites; and (c) a remedial action program for longer-term cleanup remedies.

**Emergency Response Program**

Immediate actions to remove hazardous

substances can be carried out by EPA under its emergency response program. Immediate removals are triggered by significant emergencies involving hazardous substances, such as fires, explosions, spills or direct human contact. Immediate removals involve: (a) minimizing unacceptable exposures at the site as necessary to protect life and human health; (b) stopping the hazardous release; and (c) minimizing the damage or threat. Specific responses may include: collecting and analyzing samples; controlling the release; removing hazardous substances from the site and storing the substances; treating or destroying the substances; providing alternate water supplies; deterring the spread of the pollutants; and evacuating threatened citizens.

EPA has contracted with private firms to perform emergency response and removal work. In Wisconsin, EPA has provided emergency response assistance or helped leverage responsible party cleanups at over 95 sites as of June 30, 2004, with costs totaling more than \$28.8 million. The federal Drug Enforcement Agency also provided resources to cleanup chemicals resulting from the seizure of illegal drug labs. Some examples of these responses include:

- *Milwaukee.* EPA conducted a cleanup of asbestos materials and soils contaminated by polychlorinated biphenyls (PCBs) at a site where illegal disposal and drug activities had occurred. After the cleanup, a local business purchased and remodeled the property.

- *Sheboygan County.* EPA worked with responsible parties to cleanup tanks, drums containing chemicals and contaminated soils at an

abandoned furniture manufacturer.

- *Fond du Lac County.* EPA provided cleanup along a riverbank of contaminated soil associated with a former solvent storage facility. The area is being redeveloped as a riverwalk.

- *La Crosse County.* EPA conducted the removal of buried battery casings and soil contaminated with lead and polychlorinated biphenyls (PCBs) at a former auto reclaiming facility.

- *Outagamie County.* EPA worked to dispose of wastes, decontaminate a building and excavate contaminated soils at a closed plating facility. EPA and DNR worked together to demolish the building.

- *Marathon County.* EPA conducted the removal of buried drums of paint wastes containing polychlorinated biphenyls (PCBs), and excavated contaminated soil in the parking lot of a restaurant. The drums of wastes had been placed in a ravine and then paved over to create the parking lot.

- *Milwaukee County.* EPA worked with multiple responsible parties to clean up an arsenic landfill, contaminated wetland, and creek that flows into Lake Michigan.

- *Washburn County.* EPA conducted a geophysical survey to help locate allegedly-buried drums of polychlorinated biphenyls (PCBs) and other materials in an old gravel pit. As of December, 2004, the results are being analyzed.

### **Site Assessment Program**

Except where an emergency response is required, a site must be listed on the national priority list (NPL) in order to be considered for federal remedial action. The site assessment process involves gathering historical and field data to determine if the site poses a great enough risk

for nonemergency Superfund response. The information gathered during the site assessment is used to assign a score, based on EPA criteria related to actual contamination and health and environmental effects. If a site scores above a designated cutoff, it is eligible for the NPL and may be nominated by DNR.

After the site has been nominated, EPA considers the priority of the site and decides whether it should be proposed for inclusion on the NPL. If proposed, following a public comment process, a site is listed on the NPL as a Superfund site. As of July, 2004, 1,245 sites nationwide had been evaluated and placed on the NPL. Thirty eight (3%) of these sites are in Wisconsin. (In addition, five Wisconsin sites have been deleted from the NPL and one site has been proposed for listing.) Appendix I lists the Wisconsin sites and their locations.

EPA may also propose that a site be listed on the NPL. In the summer of 1998, EPA proposed listing a 39-mile stretch of the Fox River from Lake Winnebago to Green Bay on the NPL because of contamination from PCBs (polychlorinated biphenyls). EPA has postponed a decision to list the site on the NPL as long as progress is being made in the site investigation and the selection of a remedial action. EPA provided funds to DNR for preparing the remedial investigation and feasibility study for the site (RI/FS), the proposed plan and the record of decision (ROD). In January, 2003, DNR and EPA released the ROD for the Little Lake Butte des Morts and the Appleton to Little Rapids/Kaukauna portions of the River. In July, 2003, DNR and EPA released the ROD for the Kaukauna portion to the lower bay of Green Bay. Under the ROD, the preferred remedy would require dredging and disposal of partially dewatered sediments at an engineered landfill for portions of the River and monitored natural recovery at other portions. In the summer of 2004, dredging and removal of PCB-contaminated sediments began in Little Lake Butte des Morts.

Before a site is listed, DNR attempts to identify the responsible party or parties and have that party undertake the cleanup process. If these efforts are successful, the case is managed by DNR under the state's environmental repair program and the site is generally not placed on the NPL. If these efforts are unsuccessful or the responsible party is not known, the Superfund listing process for that site may continue. After a site is listed, EPA contracts with a firm to conduct a search for potentially responsible parties to fund the remedial action. If a responsible party is found after listing on the NPL, the responsibility for funding the cleanup is transferred from Superfund to the responsible party.

Under the Superfund law, EPA may establish liability of a responsible party if it can prove that the party disposed of hazardous substances at a particular site and that those substances are now being released from the site. At sites with multiple responsible parties, Superfund can require all identified responsible parties to fund the remedial action. If some responsible parties cannot be identified, or are identified and cannot pay (for example, are bankrupt), the remaining responsible parties may be held liable for all of the cleanup costs. For example, if a responsible party caused 50% of the contamination, and no other responsible parties are identified who can pay, that party may be held liable for 100% of the cleanup costs.

In the fall of 1999, EPA began to provide funds for DNR to conduct a site discovery program. This program is used to screen sites for inclusion on the Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS), EPA's list of potential hazardous waste sites. Sites on this list go through the traditional Superfund site assessment process to determine if there is a need to conduct a cleanup action. The screening is accomplished by conducting a file review, site visit and then making a screening decision and recommendations for future activities.

## **Remedial Action Program**

EPA and DNR will negotiate with potentially responsible parties to fund the investigation and cleanup before spending any federal or state dollars on the site. Responsible parties are currently partially or fully financing investigations and cleanup at 28 Wisconsin Superfund sites and Superfund revenues are financing work at the remaining 10 Wisconsin sites. Appendix I lists these sites. The remedial investigation, design and remedial action activities have been completed at 35 of the 38 Wisconsin sites.

These 35 sites are in the operation and maintenance (O&M) phase of actions, which means the actions needed to continue to operate and maintain the cleanup remedy that has already been constructed. Examples of O&M are operating pumps to extract contaminated groundwater as part of a groundwater treatment system, pumping leachate and operating a methane extraction flare at a landfill where a cap has been installed over contamination, operating water treatment systems or analyzing samples from groundwater monitoring wells.

To date, if a site is financed with Superfund dollars, EPA has generally taken the lead role, although DNR has assumed the lead role at three sites funded with federal dollars. In cases where the responsible parties agree to pay for the necessary work, those parties may request that DNR take the lead role. Due to differences in agency procedures and the proximity of DNR staff to the sites involved, DNR is often able to facilitate the negotiation and cleanup process more quickly than EPA. However, if DNR takes the lead role in a case financed by a responsible party who fails to provide for appropriate cleanup, the lead may need to be renegotiated after EPA commits funding for that site.

## **Investigation and Feasibility Study**

After the site is listed and the preliminary negotiations are completed, a private consultant conducts a remedial investigation and feasibility study to determine the nature and extent of the problem and methods of dealing with the problem. The study considers engineering, environmental and economic factors to determine the cleanup procedures that will protect public health and the environment, meet cleanup requirements and be the most cost-effective method for a particular site.

## **Cleanup**

After review and approval of the remedial investigation and feasibility study, the site enters the remedial design and action phase. EPA or DNR (for sites where DNR has assumed the lead role) approves the cleanup alternative. EPA and the state must select remedial actions that meet federal and state environmental standards and that result in permanent cleanup. Alternative treatment technologies (such as alternatives to excavating contaminated soil and hauling it to a landfill) must be used where technically feasible. If any hazardous substances remain on the site after cleanup, the site must be reviewed every five years.

Specific actions may include the removal of containers containing wastes from a site, the installation of a clay or synthetic cap over the site, removal of contaminated soil, the construction of ditches and dikes to control surface water, the construction of drains and liners or extraction wells to treat groundwater. Private contractors perform the bulk of the work under federal or state supervision.

*Other State and Federal Requirements.* Under Superfund, remedial actions must meet the substantive requirements of all other federal and state environmental laws and state facility siting laws, if applicable. These include the maximum contaminant levels established under the federal

Safe Drinking Water Act, administrative code Chapter NR 140 groundwater quality criteria, NR 103, 104 and 105 water quality criteria, the administrative code NR 700 series environmental cleanup criteria and federal Clean Water Act water quality criteria. Remedial actions selected under Superfund are specifically exempt from the administrative permit requirements of applicable laws for all on-site activities. EPA may waive standards under specified circumstances.

*Interim Remedial Actions.* In addition to the long-term remedial actions, EPA may choose to implement interim measures to minimize damages or risks and preclude future emergency response actions. For example, construction of a new water supply system needed because of groundwater contamination would be an initial remedial measure, and finding and stopping the source of the groundwater contamination would be the long-term cleanup solution. Interim measures have been implemented at several Superfund sites in Wisconsin. Interim remedial actions are sometimes accomplished by breaking a site into "operable units," and taking a distinct action at one or more of the operable units prior to selecting the long-term or final remedial action at the site, or by doing an emergency removal action, such as removing drums of hazardous waste.

## **Federal Funding**

Federal funding for the Superfund program came from various taxes on crude oil and chemical feedstocks, cost recoveries from site operators, generators and current and past owners, interest and general revenues. Superfund taxing authority expired on December 31, 1995, and had not been reinstated as of January 1, 2005.

Superfund pays 90% of the cost of treatment and other measures until completion of the cleanup or until 10 years after operation of those measures begins for groundwater restoration. The state pays the remaining 10%. In most cases, after the first

year of post-cleanup maintenance, the state pays 100% of all operation and maintenance costs. At waste sites operated by a state or its political subdivisions, Superfund pays 50% and the state pays 50%.

### State Funding

In Wisconsin, the state share comes from the spills cleanup appropriation from the environmental management account of the segregated environmental fund or from general obligation bonds authorized for this purpose (with debt service payments from the environmental management account). DNR is authorized, under the environmental repair program, to take actions to implement the Superfund program in the state. The Department is required to review the remedial investigation and feasibility study to evaluate proposed repair actions. The Department may not commit the required state share unless it agrees with EPA's assessment of the effectiveness of the proposed repair action. Federal and state expenditures for Superfund cleanup projects in Wisconsin are shown in Table 1.

State law requires DNR to promulgate rules that will determine whether or not a municipality will be required to pay a portion of the state share at a Superfund cleanup site. Administrative rule Chapter NR 730 includes criteria for DNR's expenditure of moneys for Superfund state cost share purposes and to determine a municipality's responsibility to pay a share of the state's Superfund cost share in cases where a municipality will benefit from the proposed remedial action.

NR 730 states that DNR may require a municipality to pay up to 50% of the amount expended by DNR for the state's Superfund cost share, but not more than \$3 per capita in any year. DNR determines the portion of the state's Superfund cost share a municipality shall be required to pay based on the following factors: (a) the municipality's property value per capita divided by the average property value per capita

**Table 1: State and Federal Expenditures for Wisconsin Superfund Cleanup Projects through June 30, 2004**

Expenditures	State Share	Federal Share
Pentawood Products (Burnett County)	\$219,700	\$5,204,900
Schmalz Landfill (Calumet County)	431,000	4,004,000
Stoughton City Landfill (Dane County)	1,000,000	1,000,000
Oconomowoc Electroplating Co. (Dodge County)	1,505,000	19,255,500
Eau Claire Municipal Well Field	175,700	5,868,000
Onalaska Municipal Landfill (La Crosse County)	4,200,000	4,620,000
Mid-State Disposal Landfill (Marathon County - Special agreement with potential responsible party, federal expense not required)	992,000	0
N.W. Mauthe Co. (Outagamie County)	626,200	5,652,000
Scrap Processing Inc. (Taylor County)	<u>61,100</u>	<u>549,900</u>
<b>TOTAL EXPENDITURES</b>	<b>\$9,210,700</b>	<b>\$46,154,300</b>
<b>Committed but not yet Expended</b>		
Pentawood Products	\$1,054,700	\$6,264,300
Stoughton City Landfill	1,955,000	1,955,000
Oconomowoc Electroplating Co.	694,500	2,439,000
Onalaska Municipal Landfill	420,000	0
N.W. Mauthe Co.	313,100	2,809,000
Scrap Processing Inc.	<u>122,200</u>	<u>1,100,100</u>
<b>TOTAL COMMITTED BUT NOT EXPENDED</b>	<b>\$4,559,500</b>	<b>\$14,567,400</b>

for all Wisconsin municipalities; (b) the municipality's per capita income divided by the average per capita income for all Wisconsin municipalities; and (c) the benefit of the remedial action to the municipality, defined as the cost savings to the municipality resulting from implementation of the remedial action and measured as a percentage of the most recent annual budget.

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### Leaking Underground Storage Tank Program

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The federal leaking underground storage tank (LUST) trust fund was established in 1986 to provide funding for states to manage the cleanup of leaks from underground petroleum storage

tanks. EPA provides federal funding to states to manage the cleanup at LUST petroleum sites. EPA can also choose to take the lead in cleanup of a LUST site.

Prior to 2001, DNR acted as the lead state agency in all cleanup actions and was the state recipient of the EPA LUST grant. Beginning with the federal year 1999 grant, a portion of the federal grant was transferred to the Department of Commerce to administer cleanup at medium- and low-risk petroleum sites. Beginning in federal fiscal year 2001, DNR and Commerce received separate LUST grants from EPA.

DNR is authorized to enforce owner-financed cleanups at high-risk LUST petroleum spills and at any non-petroleum spills and to manage cleanups in cases where the owner is unknown or cannot or will not finance the necessary action. Commerce is authorized to administer cleanup at low- and medium-risk sites that are contaminated by petroleum products. As with the Superfund program, actual cleanups are carried out by private contractors. Similar to the Superfund program, federal LUST program dollars may be used for emergency action, investigation and cleanup work in cases where the responsible party is unknown or cannot or will not finance appropriate actions.

Major exclusions from the federal LUST program include: (a) home and farm tanks with 1,100 gallons or less capacity; and (b) heating oil tanks where the oil is consumed on the premises; and (c) all tanks with capacity less than 110 gallons. Other spills are covered by the state's hazardous spills program (discussed under a later section on state-funded cleanup programs). The state hazardous substances spills law (s. 292.11 of the statutes) and the NR 700 administrative rule series are used to implement federal LUST requirements and respond to both federally-regulated and non-federally regulated leaking tanks.

The LUST program complements the federal

underground storage tank program (UST) which is intended to prevent contamination of groundwater and vapor migration caused by leaks from underground storage tanks. These regulations require certain tank owners to provide evidence that they can finance cleanups necessitated by any possible future leaks and to upgrade or abandon tanks on an age-based schedule.

Commerce has responsibility for regulation and enforcement of storage tank standards and financial responsibility requirements in the UST program. The UST regulations are established in administrative rule Chapter Comm 10 to regulate flammable and combustible liquids. However, state law also requires Commerce to regulate tanks not included under federal regulations (aboveground tanks, farm and residential motor fuel underground storage tanks with less than 1,100 gallons and heating oil underground storage tank systems). Commerce regulates approximately 178,100 underground petroleum storage tank systems under federal and state requirements and 27,400 aboveground tank systems under state requirements.

Commerce also administers the petroleum environmental cleanup fund award program (PECFA). This program reimburses eligible owners and operators of petroleum storage tanks for certain costs incurred due to tank leakage. In general, PECFA reimburses certain cleanup costs for all federally-regulated tanks plus aboveground tanks, some farm tanks with 1,100 gallons or less and home, public school district and technical college heating oil tanks. A separate informational paper describes the PECFA program.

### **LUST Sites**

Approximately 178,100 former and existing petroleum product underground storage tanks are regulated by Commerce under federal and state requirements. Of this total, approximately 55,700 tanks are active in-use or temporarily-out-of-

service, of which 12,700 are permitted under federal underground storage tank regulations and the LUST program. Cleanup standards for LUST sites are established by DNR under the state hazardous substances spills law and under the administrative rule NR 700 series and Chapter NR 140. All LUST sites are regulated under the state hazardous substances spills law.

DNR administers the cleanup at high-risk petroleum LUST sites and sites with non-petroleum contamination. Commerce administers the cleanup at medium- and low-risk petroleum sites. Most LUST sites will be eligible for PECFA reimbursement for cleanup of petroleum contamination. As of June 30, 2004, there were 16,028 petroleum-contaminated sites in the reconciled databases of both DNR and Commerce. Of the total, 3,034 were open sites, of which DNR administered 2,153 and Commerce administered 881. Cleanup at 12,994 petroleum-contaminated sites had been completed, of which DNR administered 7,152 sites and Commerce administered 5,842. In addition to the reconciled sites, 4,534 petroleum-contaminated sites (including 3,689 closed sites) in the DNR database have not been matched to a site in the Commerce database.

### Funding

Federal funding provides 90% of the cost of implementing the LUST program and the state must pay the remaining 10%. Federal funding comes from a 0.1 cent per gallon excise tax on motor fuels. Table 2 indicates that Wisconsin has received \$33.0 million in federal funding since the inception of the program, which includes \$28.1 million granted to DNR and \$4.9 million granted to Commerce as of federal fiscal year 2005.

In 2004-05, federal funding is used to support 13 DNR program staff (12 in Remediation and Redevelopment and one in Enforcement) and 12 Department of Commerce staff. Federally-funded staff have decreased from a high of more than 50

positions in the early 1990s. In past years, federal funding had also been used to finance 30 emergency actions at high priority sites and 19 long-term investigations and cleanups, but is no longer available for these two purposes because of federal funding reductions in the LUST program. The majority of LUST cleanups are funded by responsible parties and are reimbursed by the state PECFA program.

**Table 2: Federal LUST Funding for Wisconsin**

Federal Fiscal Year	Federal Funding DNR	Federal Funding Commerce
1988 - 1997	\$19,408,700	N.A.
1998	1,368,000	N.A.
1999	1,661,000	N.A.
2000 *	1,342,600	\$763,400
2001	862,600	797,200
2002	862,600	797,200
2003	862,600	797,200
2004 **	886,000	887,200
2005 est.**	<u>892,200</u>	<u>847,200</u>
TOTAL	\$28,146,300	\$4,939,400

\* LUST funding is split between DNR and Commerce beginning in 2000. Beginning in 2001, DNR and Commerce received separate LUST grants from EPA.

\*\* Includes a one-time grant for Commerce of \$40,000 in FFY 2004 to review unclassified sites. Includes one-time grants for DNR of \$23,400 in FFY 2004 and \$29,600 in FFY 2005 to study site closure protocol.

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### Federal Brownfields Program

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The federal Small Business Liability Relief Brownfields Revitalization Act was signed into law by the President on January 11, 2002. The main provisions of the Act include: (a) codify and expand EPA's current brownfields program by authorizing funding for assessment and cleanup of

brownfields properties; (b) exempt certain contiguous property owners and prospective purchasers from Superfund liability; and (c) authorize funding for state response programs and limited Superfund liability for certain properties cleaned up under state programs.

The federal brownfields legislation authorizes up to \$200 million per year nationwide for grants for brownfields assessment and cleanup, of which up to \$50 million per year (or 25% of the appropriated amount) would be set aside for brownfields with petroleum contamination. In June, 2004, EPA awarded \$75.4 million in federal fiscal year 2004 grants nationwide in the following categories: (a) brownfields assessment grants of up to \$200,000 each over two years to inventory, assess and plan at brownfields sites; (b) brownfields revolving loan fund grants of up to \$1,000,000 each over five years to provide funding for a grant recipient to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfields sites owned by the subgrant recipient; and (c) brownfields cleanup grants of up to \$200,000 each over two years to carry out cleanup activities at brownfields sites owned by the grant recipient.

The June, 2004, federal awards included \$10.38 million to nine grantees in Wisconsin, which equaled 13.8% of the funds awarded nationwide. The grant amounts and recipients are shown in Table 3. (Several Wisconsin communities received direct brownfields grants from EPA prior to the June, 2004, awards.)

In May, 2004, Wisconsin enacted 2003 Act 314 to authorize DNR to enter into an agreement with EPA to establish and administer a federally-funded brownfields revolving loan program under which DNR would make loans or grants for the cleanup of brownfields. The act also authorizes DNR to, at the request of

another governmental entity, administer funds received from EPA by the other governmental entity for the establishment of a brownfields revolving loan program. The act also created the necessary state appropriations to receive the federal funds, make loans or grants, receive funds from another governmental entity, receive repayments of loans made with federal funds, and make loans or grants from the loan repayments.

During the fall of 2004, DNR was leading a multi-agency effort to establish a revolving loan fund with the \$4 million that EPA awarded to DNR. DNR is working with the Wisconsin Departments of Commerce and Administration, and the state's Regional Planning Commissions, as the Wisconsin Brownfields Coalition, to develop criteria and procedures for awarding the funds to local governments. DNR anticipates that local governments will be able to submit applications for funds in the spring of 2005. The funds may be used for cleanup of properties for which site assessments have been completed. Up to 60% of funds may be used for low- or no-interest loans, and 40% of funds may be used for grants. Of the \$4 million, \$1 million will be set aside for cleanup of

**Table 3: Federal Brownfields Grants, Awarded June 15, 2004**

	Assessment	Revolving Loan Fund	Cleanup	Total
WI DNR		\$4,000,000		\$4,000,000
Milwaukee, City Redevelopment Authority	\$400,000	1,000,000	\$580,000	1,980,000
Ashwaubenon, Village Delavan, City Delavan Redevelopment Authority	400,000		1,000,000	1,000,000
Madison, Town	200,000	1,000,000		1,200,000
Oshkosh, City			400,000	400,000
Racine, City	200,000			200,000
St. Croix Chippewa Indians of WI	<u>200,000</u>			<u>200,000</u>
<b>Total</b>	<b>\$1,400,000</b>	<b>\$7,000,000</b>	<b>\$1,980,000</b>	<b>\$10,380,000</b>

petroleum contamination that is not eligible for reimbursement under the Wisconsin PECFA program.

EPA's deadline for submittal of applications for federal fiscal year 2005 grants was November 12, 2004. EPA will announce grant awards in 2005. DNR submitted two applications totaling \$400,000 for assessment grants that would target assessment of contaminated properties in neighborhoods with high concentrations of residents with income below the poverty level.

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### **Hazardous Waste Cleanup Program**

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The federal Resource Conservation and Recovery Act (RCRA) regulates facilities which transport, store, treat, dispose of, or generate hazardous waste. These facilities are typically businesses that use hazardous substances as part of their manufacturing process or other activities, and generate quantities of hazardous wastes as a result. RCRA is intended to: (a) prevent hazardous waste problems; and (b) require facilities and generators to clean up contamination resulting from intentional or accidental release of hazardous waste at their sites.

DNR incorporated RCRA provisions into Wisconsin's hazardous waste regulations and was

authorized by EPA in 1992 to take the lead in administering most aspects of the RCRA corrective action program. DNR has implemented the RCRA corrective action program consistent with EPA rules and the NR 700 rule series.

There are approximately 150 facilities in Wisconsin that are subject to RCRA corrective action provisions, including 22 that are formally in the process of taking corrective action and four where corrective action has been completed. Many of the 22 have significant soil and groundwater contamination. Project management for most sites is with DNR, and the remaining cases are gradually being transferred from EPA to DNR. When a cleanup is required, DNR works with responsible parties, generally through some enforcement mechanism, to cleanup contamination. If the responsible party can not, or will not, complete the required cleanup, the case may be transferred to DNR's state-funded response program. Most of the remaining 124 facilities are being addressed under the NR 700 rule series, if a release of a hazardous substance has occurred.

DNR also administers cleanup of hazardous waste sites that are not covered by the RCRA corrective action provisions. These sites are typically sites that had releases of hazardous waste that were discovered as part of a hazardous waste compliance evaluation inspection by DNR staff. While DNR does not track the number of this type of site, contamination at over 100 sites has been or is being addressed through the program.

*STATE-FUNDED CLEANUP PROGRAMS ADMINISTERED BY DNR*

The Legislature has enacted several state initiatives that complement the federal programs and provide additional remedies and state funds to clean up contamination. The state-funded programs provide both emergency response and long-term environmental repair at contaminated sites. All programs require that cleanups be conducted in accordance with state environmental cleanup requirements set by statute and administrative rule. DNR holds primary responsibility for administering contaminated land cleanup programs. These programs are administered by DNR's remediation and redevelopment program and are discussed in the following sections.

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**Remediation and Redevelopment  
Organizational Structure**

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The DNR responsibilities for cleanup of contaminated land are accomplished through the Bureau for Remediation and Redevelopment in the Air and Waste Division, plus staff in the five DNR regions. Regional staff report to a Remediation and Redevelopment Team Supervisor in each region, who reports to an Air and Waste Leader in each region. The program is responsible for cleanup of contaminated sediment sites and closed wastewater facilities as well as for the DNR-administered cleanup activities described in the following sections.

DNR Remediation and Redevelopment central office staff are assigned to one of three sections: (a) the Fiscal and Information Technology Section oversees the fiscal management of state and federal

funding sources, and coordinates information technology initiatives; (b) the Policy and Technical Resources Section is responsible for the development of policy, rules, and guidance documents, provides technical expertise to support program implementation, and serves as the contact with EPA on federally-funded cleanup programs; and (c) the Brownfields and Outreach Section develops policy associated with encouraging the cleanup and reuse of contaminated property, manages state and federal grants and loans, coordinates the advisory Brownfields Study Group, manages statewide outreach, and coordinates brownfields programs with other agencies.

DNR regional staff are assigned to geographic boundaries and provide assistance for all contamination incidents within that area, including LUST sites, spills, emergency responses, abandoned containers, Superfund sites, abandoned landfills, brownfields sites, state-funded cleanup or emergency response contracts and hazardous waste corrective actions. Regional staff perform oversight of site investigations, technical assistance, project management and plan review.

The remediation and redevelopment program utilizes six statewide standing teams to promote integration, assure program continuity, involve DNR staff throughout the state, involve customers and support the increased decentralization to regional operations. The standing teams include: (a) hazardous substances spills; (b) outreach; (c) land recycling; (d) standards and streamlining; (e) automation; and (f) petroleum. The program also utilizes several ad hoc teams to address specific issues.

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## Environmental Cleanup Requirements

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Section 292.11 of the statutes requires that persons who possess or control a hazardous substance which is discharged or who cause the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of the state. DNR is responsible for establishing environmental cleanup standards for groundwater and soil. DNR promulgated the NR 700 administrative rule series to cover responses to discharges of hazardous substances at contaminated sites. NR 700 allows responsible parties to choose an appropriate cleanup method for their properties. DNR provides rules and technical guidance on a variety of methods.

The NR 700 administrative rule series went into effect in 1994 and 1995, with subsequent revisions, as a comprehensive framework to govern environmental cleanups conducted by DNR, persons who caused or possess environmental contamination, or other parties conducting a cleanup. The rules govern cleanups conducted under the spills, environmental repair and abandoned containers laws administered by DNR. The rules also govern cleanups under the drycleaner environmental response program administered by DNR, the PECFA program and brownfields grant program administered by Commerce and the agrichemical management program administered by DATCP.

The NR 700 rules address specific steps in the cleanup process, including hazardous substance discharge notification, site investigation, remedial action selection, design, construction and operation and case closure. A key aspect of the NR 700 rule series is the option of using natural attenuation for remedial action. Natural attenuation means allowing naturally-occurring physical, chemical or

biological processes to degrade contamination over a period of time. There is no requirement for post-closure monitoring. (This has been done to address PECFA program cost control issues.) DNR has published technical guidance regarding use of natural attenuation for cleanup of petroleum contamination in groundwater.

The rules contain criteria DNR will use to prioritize sites, especially sites that need state funds for cleanup. The rules also contain criteria to be used when DNR cost-shares with the federal government at Superfund sites.

DNR expects responsible parties and environmental consultants to follow the provisions of the administrative rule NR 700 series without detailed review and approval from DNR. DNR provides a number of technical guidance documents and training to consultants and responsible parties. DNR performs detailed review of the work at a site when a request for case closeout is submitted to DNR.

### Groundwater

Contaminated groundwater can affect human health by adversely impacting drinking water supplies, surface water and the migration of explosive or toxic vapors into basements. Cleanup standards for groundwater contamination at contaminated sites are established under Chapter 160 of the statutes and Chapter NR 140 of the administrative code. The statutes require DNR to establish enforcement standards for substances of public health concern and public welfare concern. The enforcement standard is a numerical value for the concentration of a contaminant in groundwater. It is based on federally-determined contaminant limits for specific compounds, including consideration of health risk and other factors. If no federal contaminant limit has been established for a specific compound the state calculates an enforcement standard. Most petroleum contamination occurs from compounds that have federally-established limits.

Chapter 160 requires DNR to establish, by administrative rule, a preventive action limit (PAL) for each substance for which an enforcement standard is established. The PAL is a contamination limit that is more stringent than the groundwater enforcement standard and is intended as a warning level to allow action to be taken prior to violation of the enforcement standard. Each state agency that regulates activities that may affect the groundwater is required to promulgate rules that establish the range of responses that the agency may take or require the party responsible for the contamination to take if the PAL is exceeded.

The DNR administrative rule chapter NR 140 and the NR 700 series include a groundwater cleanup goal of the PAL. DNR allows cleanups to achieve a standard less stringent than the PAL if achieving the PAL is determined not to be technically or economically feasible. DNR does this by granting an exemption to NR 140 for contamination above the PAL but below the enforcement standard. This has become a routine approach in the cleanup of PECFA-eligible sites.

In addition, DNR administrative rule chapters NR 140 and NR 726 allow flexible closure of contaminated sites. Flexible closure means that cleanup activities can be stopped and the site closed when groundwater contamination levels exceed enforcement standards if the following conditions are met: (a) the source of contamination has been adequately cleaned up; (b) groundwater contamination exceeding NR 140 PALs will not migrate across the property line on to any property for which a PAL exemption has been granted, or which has been included on the GIS registry for an enforcement standard exceedence and for which a notification letter has been provided by DNR to the property owner regarding residual contamination, or has a recorded groundwater use restriction on the deed; (c) natural processes will break down the contamination in a reasonable amount of time to meet state groundwater standards; (d) there is no

threat to human health and the environment as a result of selecting natural attenuation as the remedial option; and (e) except for NR 140, all applicable public health and environmental laws have been complied with.

DNR promulgated an administrative rule, effective November 1, 2001, that created a geographic information system (GIS) registry that includes information about contaminated sites that have been closed with a groundwater enforcement standard exceedence. The rule requires that sites with residual groundwater contamination in excess of the NR140 enforcement standard be placed on a GIS registry, instead of recording a groundwater use restriction on each property, as was the previous requirement for flexible closure. The site information is available on the DNR Internet web site. DNR also promulgated a rule, effective August 1, 2002, that requires inclusion on the GIS registry of sites approved for closure with residual soil contamination.

As of November 29, 2004, 3,148 sites have been placed on the GIS registry of closed sites with a groundwater enforcement standard exceedence, residual soil contamination, or both. Of this total, 2,698 are PECFA-eligible. Of the 3,148 sites: (a) 2,113 sites have a groundwater enforcement standard exceedence, of which 1,864 are PECFA-eligible; (b) 324 sites have soil contamination only, of which 199 are PECFA-eligible; and (c) 711 sites have both groundwater and soil contamination, of which 635 sites are PECFA-eligible.

## **Soil**

Contaminated soil can affect human health if a person has direct contact with contaminated soil or if the contamination degrades groundwater or air quality. Soil remediation standards are contained in Chapter NR 720, which includes numerical values for a limited number of specific compounds that represent concentrations of contaminants that can remain in soil at a site and not cause

groundwater to become contaminated above groundwater quality standards in NR 140. NR 720 also includes numerical values for a limited number of compounds that represent the amount of contaminants that can remain at a site and not cause a risk to human health through eating or breathing contaminated soil particles. NR 720 also allows consultants to develop site specific soil cleanup standards, which are based on conditions at the site and can allow most or all of the contaminated soil to remain in place at certain sites. DNR administrative rules also include standards for the one-time landspreading of petroleum contaminated soils at certain suitable locations, with natural degradation of the contaminants by soil microorganisms.

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### **Hazardous Substance Spills Program**

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Under state law, DNR must be notified immediately of any discharge of hazardous substances (s. 292.11 of the statutes, known as the spills statute). "Discharge" includes spilling, leaking, pumping, pouring, emitting, emptying and dumping. The first report of a discharge is typically made to a DNR regional office, the local DNR warden, or a 24-hour telephone hotline staffed by the state Division of Emergency Government. Leaking underground storage tanks are included in the definition of "spills," but are discussed under the section on the LUST program.

Administrative rule NR 706 establishes notification requirements for reporting a non-LUST discharge of hazardous substances. It also establishes notification exemptions for discharges of certain substances if the discharge does not adversely impact or threaten to impact human health, safety or the environment, if the substances are immediately cleaned up or evaporate before they can be cleaned up and are below specified quantities. The rule includes petroleum

compounds, agrichemicals and substances for which there are federally-established reportable quantities.

### **Responsible Party**

The responsible party is required to take necessary action to restore the air, land or water to the condition it was in before the release occurred to the extent practicable, in compliance with the hazardous substances spills law. Responsible parties take the appropriate action in response to a discharge in over 90% of all reported spills. DNR can take action if the responsible party is not known or does not take appropriate action. The NR 700 administrative rule series establishes which actions are necessary to respond to the discharge.

If the responsible party is identified, the party is required to reimburse DNR for any expenses the Department incurs in the response. Reimbursements are credited to the environmental management account of the environmental fund. When responding under this program, DNR has the authority to enter any property with permission of the owner or a special inspection warrant if necessary to prevent increased damage to the air, land or water. DNR employees or contractors may enter private property without prior permission if the delay involved in obtaining permission will result in an imminent risk to public health or safety or the environment. DNR may require, through an administrative order, that preventive measures, such as the installation or testing of equipment or a designated way of performing an operation, be taken by anyone possessing or controlling a hazardous substance if the Department finds that existing control measures are inadequate.

### **DNR Response Options**

DNR makes two types of responses at spills sites. First, DNR provides oversight support for cleanups by responsible parties, which can include

evaluating the effectiveness of the response effort by a responsible party and offering technical assistance to the responsible party or their contractor. Second, if there is no responsible party or other local or federal governmental resources available to manage the cleanup, DNR uses the environmental fund to pay a zone contractor to provide emergency response services throughout the state or, in non-emergency responses, to procure the cleanup of a spill. On significant spills, DNR may request EPA assistance under the Superfund emergency removal program.

### **Number and Type of Reported Spills**

Approximately 900 spills are reported to DNR annually, including 910 spills reported in 2001, 909 reported in 2002, 544 reported in 2003 and 333 in 2004. (Partial data was available for 2003 and 2004 as of December, 2004, because DNR was still entering data into its computer database regarding spills reported in the two years.) Prior to enactment of reporting requirement revisions to NR 706 in February, 1997, the number of spills reported averaged approximately 1,200 annually. Since the NR 706 revisions went into effect, the number of spills reported has decreased slightly because certain small spills no longer have to be reported.

DNR estimates that approximately 30% of the hazardous substances spilled are petroleum products, 44% are substances such as fertilizer, paint, ammonia and solvents, and the remaining 26% are unclassified (data is not available). The largest sources of spills are transportation accidents such as releases of diesel fuel or spills from loads of semi trucks, spills at industrial facilities, spills on private property and spills on public property.

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### **Abandoned Containers Actions**

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DNR may contain, remove or dispose of abandoned containers and their contents or take any other necessary related emergency action. An "abandoned container" is defined as any container that holds a hazardous substance and is not being monitored and maintained (section 292.41). The definition does not apply to buried containers or containers located in a waste disposal facility. DNR has the authority to enter any property with either permission of the owner or a special inspection warrant, if necessary to prevent increased damage to the air, land or water.

In most cases, DNR becomes aware of abandoned containers from public tips that containers of unknown material have been abandoned without the consent of the property owner, on public property, or into or adjacent to surface water. Except in emergency situations, requests to DNR to deal with abandoned containers are not approved if a responsible party is known and has the financial resources to respond to the problem. If the responsible parties are identified after a state-funded response has occurred, the Department may recover its costs.

DNR responded to 115 sites in 2002 through 2004 that had abandoned containers holding hazardous substances, with a total DNR response cost of approximately \$230,800 from the environmental fund. Most of the abandoned containers are found in the most populated areas of the state, including the Milwaukee and Fox Valley regions. In addition to these responses, the Department of Justice provided DNR with information about the existence of several illegal drug labs in each of 2003 and 2004, and the potential environmental impacts of the labs. DNR has found that the environmental impacts from most of the labs were minimal, but DNR continues to assess how the wastes produced by the lab are

disposed of and whether any environmental concerns exist at individual lab sites.

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### **State-Funded Response Actions**

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DNR administers a program of state-funded response actions that can be considered the state equivalent to the Superfund program. The program has authority for all types of hazardous substances sites, including approved and unapproved solid and hazardous waste disposal facilities, and waste sites, under s. 292.31 of the statutes, the environmental repair statute. Typical sites cleaned up under s. 292.31 are sites that were designed as a component of a specific waste management process and became contaminated (for example, old landfills), industrial sites, and contaminated municipal water supplies. Most state-funded response actions are accomplished under s. 292.11 of the statutes, the hazardous substance spill law. Typical sites cleaned up under s. 292.11 are pipeline spills, train spills and spills of hazardous substances at industrial sites.

#### **Responsible Party**

DNR tries to determine what parties are responsible for contamination problems at hazardous substance sites. Under the environmental repair statute, a person is a responsible party if that person: (a) knew or should have known at the time disposal occurred that the disposal would cause or contribute to a substantial danger to public health or the environment; (b) violated any applicable law, plan approval or administrative order and the violation caused or contributed to the condition at the site; or (c) took actions which caused or contributed to the condition at the site and would result in liability under common law in effect at the time the disposal occurred.

DNR requires the responsible party to fund the costs of the site investigation and cleanup if the responsible party is able to do so. In the majority of contamination cases, the responsible party works cooperatively with DNR, and completes and pays for the cleanup.

Under the spills law and environmental repair law, a person who contributes to contamination may be held liable for the entire cost of cleanup. However, if a local government has initiated the local governmental unit negotiation process under s. 292.35 of the statutes (described in a later section), responsible parties are liable for costs in proportion to the percentage of contamination they caused. For example, if a responsible party caused 50% of the contamination and no other responsible parties are identified who can pay, it is liable for 50% of the cleanup costs.

The liability provisions of Superfund, s. 292.11 (spills statute) and s. 292.31 (the environmental repair statute) would require the responsible party to pay all of the cleanup costs (even if it caused 50% of the contamination) if no other responsible parties are identified, and if the responsible party is unable to differentiate between the contamination caused by the responsible party and the contamination caused by other parties. This differs from the local governmental unit negotiation process under s. 292.35 of the statutes, which would require the responsible party to pay only 50% of the cleanup costs if it caused 50% of the contamination if an agreement has been reached or a recommended agreement has been issued. DNR state-funded response actions use the stricter liability provisions of the spills statute and the environmental repair statute.

If DNR cannot identify the responsible party or if the responsible party cannot or will not pay cleanup costs (for example, if the company is insolvent), the state pays for cleanup. If DNR identifies responsible parties at a later date, it can seek recovery of its cleanup costs from the

responsible parties.

### **Inventory of Problem Sites**

Under the environmental repair statute, DNR is required to compile and maintain an inventory of problem sites, with each site ranked on the basis of hazard and necessity for remedial action. (The spills statute does not require DNR to maintain a similar inventory of spill sites.) The Department may investigate, analyze and monitor a site or facility to determine if pollution problems exist and the extent of those problems. Generally, sites that do not score high enough on EPA's ranking system to become a Superfund site, but are considered a potential risk to human health, safety or the environment, are likely state-funded response sites. Because of delays in the Superfund process, the Department also includes some potential Superfund sites for state-funded response action when it determines that postponing action at these sites could significantly increase the magnitude of an existing problem.

DNR has developed several publications that provide information about sites with contamination or sites with a history of activity related to solid waste disposal or contamination. The DNR publications are available in hard copy format and electronically on the Department's internet web site. In addition, the Department developed and maintains a comprehensive database called BRRTS (Bureau for Remediation and Redevelopment Tracking System) that allows people to search for information about sites that may have contamination. This is available to the public on the Department's Internet web site as "BRRTS on the Web." The BRRTS database supersedes the publications listed below. All known sites are listed together on the BRRTS database. The lists below are subsets of the entire BRRTS database.

1999 Wisconsin Act 88 prohibits DNR from providing lists of 10 or more individuals that

include personal information such as name and address about individuals who do not want to be identified. DNR has implemented the provisions by excluding personal identifiers about individuals (name, home address and telephone number) from Internet web site information about contaminated sites if not in conflict with DNR duties under other laws. Other information about individual sites is included on the web site, such as the type of contamination, cleanup actions taken at the site and whether the cleanup has been completed.

*Registry of Waste Disposal Sites in Wisconsin.* DNR maintains a registry of waste disposal sites. This is a comprehensive listing of all known sites where solid or hazardous substances have been, or may have been, deposited. The registry does not attempt to determine if a definite hazard exists at a site. DNR last updated the registry in June, 1999, with a list of 4,298 active, closed and abandoned waste disposal sites in Wisconsin, and provides the information on the Department's Internet web site.

*Inventory of Sites Causing Environmental Pollution.* DNR is required to publish an updated inventory of sites that may cause or threaten to cause environmental pollution every four years. In October, 1995, DNR last published an inventory of sites in the Wisconsin Remedial Response Site Evaluation Report.

The 1995 report contains three lists of sites that the Department believes may cause health or environmental problems: (a) 144 sites or facilities that may cause or threaten to cause environmental pollution under the environmental repair statute (s.292.31), including 38 sites on the NPL; (b) 554 spill sites as of October, 1995, with a "high potential" of danger which are administered by DNR under the state spill statute (s. 292.11); and (c) LUST sites, the number of which has been updated to include 16,028 potential PECFA sites administered by DNR and Commerce as of June 30, 2004.

*Hazard Ranking List.* State law requires DNR to rank all sites on the initial inventory. An initial hazard ranking list was published in March, 1988, which listed 60 sites that were considered a substantial danger to human health or the environment at that time. DNR last published an updated hazard ranking list in July, 1994, with 118 sites that were determined to present a substantial danger and 25 sites that were determined to not present a substantial danger.

In 2002, DNR began a pilot project for an alternative ranking system that would be simpler to use than existing ranking methods. Under the pilot program, environmental and socioeconomic criteria are being used to rank sites as high-, medium- or low-priority. It is being used on a pilot basis to help select sites to be funded under state-funded response and to determine reimbursement funding priority (high, medium or low category) in the dry cleaner environmental response program. DNR will evaluate the pilot program and determine whether to make administrative rule changes related to categorizing of sites.

### **Investigation and Remedial Action**

If a site or facility presents a substantial danger to public health, welfare or the environment, DNR is authorized to take specific remedial action. This authority includes: (a) taking direct action to remedy the pollution; (b) repairing or restoring the environment; (c) establishing a long-term monitoring and maintenance program for the facility; (d) providing temporary or permanent replacement of private water supplies damaged by the facility; (e) assessing the potential health effects of the occurrence; or (f) any other action necessary to protect public health, safety or the environment.

The process of investigation and cleanup is similar, but somewhat less complex, than it is for Superfund sites. A preliminary site investigation is done by DNR when the site is scored for the hazard ranking list. If the site is considered an imminent hazard based on this investigation,

emergency action may be undertaken. If the site does not present an imminent danger, but is determined to be a significant environmental hazard, the site is placed on the list for long-term cleanup.

When DNR is ready to proceed with the cleanup process at the site, it contracts for a complete investigation. DNR then contracts to have a remedial options plan developed which details the possible cleanup alternatives. After the appropriate option is selected (including the public hearing process), the remediation is initiated. Costs associated with these activities are funded from the environmental management account of the state segregated environmental fund and from general obligation bonding.

Since 1988, the hazard ranking list has been used to select additional sites for investigation and cleanup. In 1987 Wisconsin Act 27, the Legislature required that DNR start remedial action on at least two sites per year from 1989 through 2000 and commence remedial action at all sites by 2000. DNR identified many contaminated sites in the years following enactment of 1987 Act 27. As of September, 2004, DNR had initiated state-funded response actions at 91 sites (an average of six sites per year), had begun site investigations at 45 sites, and anticipates starting remedial actions at five more sites by the spring of 2005. State-funded investigations have been initiated at over 165 other contaminated sites. There are several hundred sites where remedial action currently underway is being financed by responsible parties. DNR is overseeing a portion of that work, in part based on the overall priority of the case.

Appendix II lists the state sites that had been, or were being, investigated or cleaned up under the state-funded response action program from its inception in 1983 through December, 2004. The list does not contain the sites where responsible parties are financing cleanup and DNR is overseeing the work. (Some of these sites are also listed in the Superfund national priority list.) DNR anticipates

that during the 2003-05 biennium it will expend approximately \$12.8 million from the environmental fund for cleanup activities at these sites.

### State-Funded Response Appropriation

DNR administers a state-funded response appropriation through the environmental management account of the environmental fund. The appropriation had \$6,979,200 available for expenditures in the 2003-05 biennium. This included expenditure authority of \$3,321,300 in 2003-04 and \$2,440,800 in 2004-05. (In addition, at the beginning of 2003-04 the appropriation had encumbrances of \$1,049,300 and an unencumbered carry-in balance of \$167,800). Expenditures from the appropriation totaled \$1,862,400 in 2003-04 and averaged \$3.3 million annually for the five years from 1999-00 through 2003-04. As part of implementation of 2001 Acts 16 and 109 and 2003 Act 1 across-the-board agency appropriation reductions and lapses, \$1,808,800 was transferred from the appropriation account to the general fund in the 2001-03 biennium.

The appropriation is used for DNR expenditures related to: (a) DNR-lead cleanups of contaminated sites where the responsible party is unknown or can not or will not clean up the site (see Appendix II for a list of sites with cleanup funded from the appropriation); (b) the state share at certain Superfund site cleanups; (c) the state match to federal LUST expenditures; (d) emergency spill response and cleanups; (e) response and cleanup of abandoned containers of hazardous substances where the responsible party can not be identified; (f) \$3 per capita payments to certain municipalities for groundwater monitoring and equipment purchases; (g) provision of temporary emergency water supplies; (h) DNR-lead remedial actions at abandoned privately-owned landfills; and (i) DNR-lead cleanups resulting from responsible party payment of court settlements.

### Municipal Monitoring Cost Reimbursements

Under certain conditions, DNR is directed to reimburse costs incurred by a municipality for groundwater monitoring. The reimbursement is for costs in excess of \$3 per capita annually for monitoring mandated by the Department at municipally owned or operated "nonapproved" solid waste sites. (An "approved" facility is defined by statute as one that had a plan of operation approved by DNR after May 21, 1978, or had its plan approved between May 21, 1975, and May 21, 1978, and had its plan subsequently reviewed and reapproved by DNR. All other facilities are classified "nonapproved.")

Reimbursements are paid out of the environmental management account of the environmental fund before any other claims against the fund are paid. Table 4 indicates that from 1987 through December 1, 2004, \$1.8 million in payments had been made to 12 local governments.

**Table 4: Municipal Monitoring Cost Reimbursement - December 1, 2004**

Jurisdiction	Reimbursement
Baraboo	\$333,699
Black River Falls	129,053
Boscobel	31,564
Grafton, Town of	100,000
Green County	137,062
Hartford	89,641
New Richmond	73,704
Pittsville	44,197
Rhinelanders	534,221
Shawano	31,009
Sheboygan, Town of	17,528
West Bend	<u>268,133</u>
Total	\$1,789,811

### Provision of Temporary Emergency and Permanent Water Replacement Supplies

DNR provides temporary emergency water supplies to persons with water supplies that have

been adversely affected by contamination from a site or facility subject to cleanup requirements under the hazardous substance spills statute or environmental repair statute. Provisions are contained in administrative rule NR 738. Temporary emergency water supplies include potable water obtained in bottles, by tank truck or by other similar means, or a temporary connection to an existing water supply, supplied at a capacity sufficient to satisfy water use functions impaired by the contaminated water supply.

The environmental fund pays for temporary emergency water supplies if the following criteria are met: (a) the source of potable water is from a contaminated well or contaminated water supply; (b) the contamination is known or is suspected by DNR to be from environmental pollution or a hazardous substance discharge subject to the spills statute (s. 292.11) or the environmental repair statute (s. 292.31); (c) water sampling is conducted in accordance with specific requirements; and (d) DNR or the Division of Health in the Department of Health and Family Services has issued a drinking water advisory notice for the water supply. DNR has paid a cumulative total of approximately \$201,700 as of December 1, 2004, for temporary emergency water supplies, including \$32,933 in 2002-03 and \$10,737 in 2003-04.

The environmental fund also pays for permanent replacement water supplies instead of temporary emergency water supplies under certain circumstances. DNR may grant a variance to the rule in order to allow payment of a portion of the costs of a permanent replacement water supply if: (a) the owner of the contaminated well demonstrates financial hardship; and (b) DNR determines that the cost of the permanent replacement water supply would create an unreasonable financial hardship for the well owner. DNR has paid approximately \$226,200 from 1984 through December 1, 2004, for 106 permanent replacement water supplies where there was a demonstrated financial hardship for the well owner. This included expenditures of \$24,646 for

seven wells in 2002-03 and \$27,390 for eight wells in 2003-04.

### **General Obligation Bonds**

DNR has been authorized \$41 million in general obligation bonding through the 2003-05 biennium to fund the state's cost-share for cleanup of federal Superfund and LUST sites and state-funded cleanups under the environmental repair statute (s. 292.31) and hazardous substances spills statute (s. 292.11). Bonding authority can be used for public purpose projects such as cleanup of contaminated groundwater, soils and sediments, and activities such as investigation, remedial design and cleanup of a specific site when the responsible party is unknown, unable or unwilling to fund the cleanup. Bonding authority cannot be used for general preliminary investigations or cleanups funded by responsible parties.

DNR has expended or encumbered \$36.0 million of the available \$41 million in bonding authority as of December 1, 2004. DNR has committed or is expecting to commit, by the end of 2004-05, the remaining bonding authority for work at sites where investigative work has been completed and remedial design work is completed or underway, and implementation of the selected remedy may occur.

DNR has also been authorized \$7 million in general obligation bonding through the 2003-05 biennium for contaminated sediment cleanup in Lake Michigan or Lake Superior or a tributary of one of the two lakes. As of December 1, 2004, DNR has expended or encumbered \$4.7 million of the available \$7 million.

In 2001 Act 16, as modified in 2003 Act 33, payment of the debt service repayment for the general obligation bonding authority for both remedial action and contaminated sediment cleanup was converted from general purpose revenue (GPR) to segregated (SEG) revenue from the environmental management account of the

environmental fund. In 2002-03, \$2,092,800 SEG was expended on general obligation bond debt service for remedial action and contaminated sediment cleanup. In 2003-04, \$1,601,400 SEG was expended for debt service, which was lower than the estimated amount of \$3,203,700 under 2003 Act 33 because the state restructured payments on many of the state's bonds. In 2004-05, debt service costs are anticipated to be \$3,771,600.

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### **Liability Exemptions and Assurances**

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1993 Wisconsin Act 453, 1997 Wisconsin Acts 27 and 237, 1999 Wisconsin Act 9 and 2001 Wisconsin Act 16 established and modified a number of limitations on liability for cleanup of contamination under the hazardous substances spills law in order to encourage persons to voluntarily cleanup contamination and restore properties to productive use. These provisions are generally intended to encourage the cleanup and redevelopment of brownfields. Brownfields are abandoned, idle or underused industrial or commercial properties, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

DNR is authorized to charge fees to offset its costs for providing various types of technical assistance and assurance letters related to the environmental liability of owning a property. For example, persons who want to obtain a written assurance letter that DNR approves an exemption from future liability for cleanup of a property under certain circumstances, must pay a fee to DNR for the cost of providing the review and assurance.

#### **Voluntary Party Limited Liability Provisions**

Parties who conduct voluntary cleanups of contaminated property are able to limit their

environmental liability if they enter DNR's voluntary party liability exemption (VPLE) program and meet certain conditions. Voluntary parties may obtain an exemption from further remedial action on the property and the Department of Justice is prohibited from commencing an action under the federal Superfund law against the voluntary party if the voluntary party takes certain actions to investigate and clean up the property.

Effective October 29, 1999, (the effective date of 1999 Act 9), a "voluntary party" is defined as any person who submits an application to obtain an exemption from liability and who pays the required fees to offset DNR costs for providing the voluntary party exemption certification. Between July 1, 1998, and October 28, 1999, a "voluntary party" was defined as any person who did not intentionally or recklessly cause the release of a hazardous substance on the property. Between 1994 and June 30, 1998, the voluntary party liability exemption was limited to certain purchasers of contaminated property. Certain hazardous waste treatment, storage or disposal facilities are not allowed to obtain a voluntary party liability exemption.

#### **Exemption Process**

A voluntary party is exempt from certain hazardous substance discharge and solid and hazardous waste statutory requirements if: (a) the party enters DNR's VPLE program by filling out an application and paying the appropriate fees; (b) an environmental investigation of the property is conducted by the voluntary party and approved by DNR; (c) the property is cleaned up by restoring the environment and minimizing the harmful effects from a release of a hazardous substance in accordance with DNR rules and any contract entered into under those rules; (d) the voluntary party obtains certification from DNR that the property has been satisfactorily restored and that the harmful effects from a release of a hazardous

substance have been minimized; (e) if the voluntary party owns or controls the property, the voluntary party maintains and monitors the property as required by DNR; (f) the voluntary party does not engage in activities that are inconsistent with the maintenance of the property; and (g) the voluntary party has not obtained the DNR certification by fraudulent methods.

The voluntary party's exemption from liability continues notwithstanding the occurrence of any of the following: (a) future statutes, rules or regulations impose greater responsibilities on property owners; (b) the voluntary party's remediation is not completely successful; (c) the contamination from a hazardous substance that is the subject of remediation is discovered to be more extensive than anticipated by the voluntary party and DNR; or (d) if the voluntary party does not own or control the property, the person who owns or controls the property fails to maintain and monitor the property as required by DNR. The exemption applies to the voluntary party's successor if the successor maintains the property and, if the voluntary party obtained the DNR certification by fraudulent means, the successor was unaware of the fraud.

A voluntary party is exempt from the requirements of certain hazardous and solid waste statutes for property affected by discharges that originated off-site if all of the following occur at any time before or after the date of acquisition: (a) the property is cleaned up by restoring the environment to the extent practicable and minimizing the harmful effects from the discharges in accordance with DNR rules and any contract entered into under those rules, except for the hazardous substance originating off-site for which the voluntary party is exempt under off-site liability provisions; (b) the voluntary party obtains a certificate of completion from DNR that the environment has been satisfactorily restored to the extent practicable and the harmful effects from a release have been minimized, except for the discharge originating off-site for which the

voluntary party is exempt from liability under the off-site liability provisions; (c) the voluntary party obtains a written determination concerning liability from DNR under current off-site liability provisions; and (d) the voluntary party continues to meet provisions under the off-site discharges liability exemption (discussed in a later section).

A voluntary party may receive interim liability protection from the same solid and hazardous waste statutes as under the voluntary party liability exemption with respect to a discharge of a hazardous substance on or originating from the property if the discharge occurred before the environmental investigation is completed, and if all of the following apply: (a) an environmental investigation of any discharges of hazardous substances originating from the property is conducted and approved by DNR; (b) if required by DNR, the voluntary party enters into an agreement with DNR under which the voluntary party agrees to conduct a cleanup approved by DNR; (c) the voluntary party obtains insurance to cover the cost of a cleanup of hazardous substance discharges that occurred before DNR approved the investigation and that are discovered while conducting the cleanup, the insurance complies with DNR rules and the insurance names the voluntary party and the state as insureds; (d) if DNR requires the voluntary party to enter into an agreement with the Department under the interim liability provision, the voluntary party conducts the agreed upon cleanup activities approved by DNR; (e) a hazardous substance discharge that occurred before the investigation is completed is discovered after the investigation is approved and before the cleanup is completed; and (f) the voluntary party has not obtained approval of the investigation or the agreement by fraudulent methods. DNR has not promulgated rules regarding the insurance requirement because in 2000 the advisory Brownfields Study Group recommended that the interim liability exemption be deleted from the statutes. DNR has not received any indication of interest from voluntary parties to use this exemption.

A voluntary party is also exempt from liability under the hazardous substances and solid waste laws if there exists a hazardous substance in groundwater on a property in a concentration that exceeds a groundwater enforcement standard and DNR determines that natural attenuation will restore groundwater quality in accordance with DNR rules. Natural attenuation would mean the reduction in the mass and concentration in groundwater of a substance, and the products into which the substance breaks down, due to naturally occurring physical, chemical and biological processes, without human intervention.

The exemption from liability in the case of a groundwater enforcement standard exceedence is available if the release of the hazardous substances occurred prior to the date DNR approves the environmental investigation of the property and if all of the following occur at any time before or after the date of acquisition: (a) the party enters the program and pays the appropriate fees to DNR; (b) an environmental investigation of the property is conducted that is approved by DNR; (c) the hazardous substances discharges identified by the investigation are cleaned up by restoring the environment to the extent practicable and minimizing the harmful effects from the discharges in accordance with DNR rules and any contract entered into under those rules, except that the requirement does not apply with respect to the hazardous substance in groundwater that DNR has determined will be brought into compliance with DNR rules through natural attenuation; (d) if required by DNR, the voluntary party obtains insurance to cover the costs of cleanup of the hazardous substance that DNR has determined will be brought into compliance with DNR rules through natural attenuation, in case natural attenuation fails, and the insurance complies with DNR rules and names the state as the insured; (e) the voluntary party obtains a certificate of completion from DNR that the property has been satisfactorily restored to the extent practicable and that the harmful effects from the discharges have

been minimized, except with respect to the hazardous substance in groundwater that DNR has determined will be brought into compliance with DNR rules through natural attenuation; (f) the voluntary party maintains and monitors the property as required by DNR; (g) the voluntary party does not engage in activities that are inconsistent with the maintenance of the property; and (h) the voluntary party has not obtained the DNR certification by fraudulent methods. This provision does not exempt the property from any lien for recovery of cleanup costs incurred by DNR prior to the date that DNR issues the natural attenuation certification.

DNR promulgated rules related to requirements for insurance at sites where voluntary parties are using natural attenuation in cases of groundwater contamination and a liability exemption is sought. The rules are found in Chapter NR 754, which took effect as an emergency rule in March, 2001, and as a permanent rule in July, 2001. As of December 1, 2004, DNR has received insurance premiums and fees totaling \$110,338 for nine sites, and has issued certificates of completion for all nine sites.

DNR is authorized to approve a partial cleanup by a voluntary party and issue a certificate of completion that states that not all of the property has been satisfactorily restored or that not all of the harmful effects from a discharge of a hazardous substance have been minimized. Approval of a partial cleanup would exempt a voluntary party, with respect to the portion of the property subject to the partial approval, from certain environmental cleanup requirements. A certificate for partial cleanup can be issued only if: (a) an investigation is conducted of the property; (b) public health, safety or the environment will not be endangered by any hazardous substances remaining on or originating from the property after the partial cleanup; (b) the activities associated with any proposed use or development of the property will not aggravate or contribute to the discharge of a hazardous

substance and will not interfere with or increase the costs of cleaning up the property; and (c) the owner of the property agrees to cooperate with DNR to address problems caused by hazardous substances remaining on the property.

The exemption or partial exemption from liability for a voluntary party does not apply to certain hazardous waste treatment, storage or disposal facilities. The exemption or partial exemption does not exempt the property from any lien for recovery of costs filed by DNR prior to the date DNR issues a certificate of exemption or partial exemption.

### **Participation**

As of December 1, 2004, 203 applications have been received for participation in the purchaser or voluntary party liability program. Of this total, 43 properties have received a certificate of completion and received an exemption from DNR from future liability for the site. Six were denied because the applicant did not meet the definition of purchaser (under the old definition of voluntary party), and 22 applications were withdrawn. The remaining 132 properties are in the process of completing the investigation and cleanup needed to receive a certificate of completion.

After applying for the exemption, a voluntary party must conduct an environmental assessment to provide information about the known or suspected contamination at the site and to determine what actions will be necessary to cleanup the property to comply with state laws. The voluntary party must then complete an environmental investigation and must conduct a cleanup. After completion of the cleanup, the voluntary party must request and receive DNR close out under administrative rule Chapter NR 726. At that time DNR certifies the exemption from future liability.

Persons who want to participate in the

voluntary party process may request a number of types of assurances. Prospective purchasers of property may request a letter from DNR certifying that they are entitled to the voluntary party liability exemptions. The voluntary party may request that DNR approve a partial cleanup and issue a certificate of completion approving an environmental investigation and a portion of the cleanup. DNR issues a certificate of completion for an entire property after it approves the investigation and cleanup of a property.

### **Local Government and Economic Development Corporation Liability**

Local governments and certain economic development corporations are not liable for cleanup under the hazardous substances spills law for discharges of hazardous substances on or originating from property they acquired in certain ways. They are also exempt from the requirement to reimburse DNR for any cleanup expenses incurred by DNR at these sites. Local governmental units include a city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewage district, redevelopment authority, public body designated by a municipality, community development authority and housing authority. An economic development corporation would have to be one described in section 501 (c) of the Internal Revenue Code that is exempt from federal taxation under section 501 (a) of the Internal Revenue Code, or an entity wholly owned by such a corporation.

The local government exemption from liability would apply if the local government acquired the property: (a) through delinquency proceedings or as the result of an order by a bankruptcy court; (b) from another local government that is exempt under the local government exemption provision; (c) through condemnation or other eminent domain proceedings; (d) for the purpose of slum clearance or blight elimination; (e) through escheat (where there is no heir to the property); or (f) using funds

appropriated under the Warren Knowles-Gaylord Nelson Stewardship or Warren Knowles-Gaylord Nelson Stewardship 2000 program. The economic development corporation exemption would apply if the corporation acquired the property to further the economic development purposes that qualify the corporation as exempt from federal taxation.

A local government or economic development corporation is not eligible for the exemption from liability if the discharge of the hazardous substance was caused by: (a) an action taken by the local government or corporation; (b) a failure of the local government or corporation to take appropriate action to restrict access to the property in order to minimize costs or damages that may result from unauthorized persons entering the property; (c) a failure of the local government or corporation to sample and analyze unidentified substances in containers stored aboveground on the property; or (d) a failure of the local government or corporation to remove and properly dispose of, or to place in a different container and properly store, any hazardous substance stored above ground on the property in a container that is leaking or is likely to leak. In addition, if the local government or corporation intends to use or develop the property, the exemption does not apply if the local government or corporation does not take actions that the DNR determines are necessary to reduce threats to public health or safety related to the reuse of the property.

Local governments that meet the specified conditions are exempt from environmental liability and do not have to receive approval from DNR. Thus, DNR does not have data about how many sites are eligible for the exemption. DNR estimates that, as of December 1, 2004, at least 30 local governments have requested that DNR provide a letter of general liability clarification, which is a written determination by DNR on the local government's eligibility for the exemption. In addition, applications for site assessment grants (described in a later section) indicate many other local

governments are acquiring contaminated properties for which they might use a local government liability exemption.

DNR is implementing a pilot program where local governments and economic development corporations that qualify for the liability exemption may be exempted from the chapter NR 600 hazardous waste management requirements. DNR can use enforcement discretion, on a case-by-case basis, at such sites with a history of hazardous waste management activities. As of December 1, 2004, three sites have been granted letters documenting DNR's decision to use enforcement discretion.

### **Lender Limited Liability Provisions**

A lender that acquires title to, or possession or control of property when it is enforcing a security interest is exempt from environmental liability under the hazardous substances spills law if the lender: (a) does not intentionally or negligently cause a new discharge of a hazardous substance or exacerbate an existing discharge; (b) notifies DNR of any known discharge of a hazardous substance; (c) conducts an environmental assessment at any time up to 90 days after acquiring the property and follows certain procedures related to the assessment; (d) is not engaged in the operation of a business at the property and implements an emergency response action in response to the discharge of a hazardous substance released on or after the date the lender acquires title to, or possession or control of, the property; (e) allows DNR, an authorized representative of DNR or any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of the party to enter the property to respond to the discharge; (f) agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge; and (g) agrees to any other condition that DNR determines is reasonable and necessary to ensure that DNR or other persons can adequately respond to the

discharge.

The lender is required to reimburse DNR for the costs of reviewing materials if the lender requests a written clarification of their liability status. As of December 1, 2004, DNR has issued 14 lender assessment review letters.

### **Liability Exemption for Off-Site Discharges**

A person is exempt from liability for remedial action under the spills law with respect to the existence of a hazardous substance in the groundwater or soil, including sediments, on property possessed or controlled by the person if: (a) the discharge of the hazardous substance originated from a source on property that is possessed or controlled by another; (b) the person did not possess or control the hazardous substance on the property on which the discharge originated or cause the original discharge; (c) the person conducts an investigation or submits other information that DNR determines is adequate to determine that (a) and (b) are met; (d) the person agrees to allow DNR and DNR's authorized representatives, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the property and take action to respond to the discharge; (e) the person agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge; and (f) the person agrees to other specified conditions that DNR determines are reasonable and necessary to ensure that DNR or other specified persons can adequately respond to the discharge.

In addition, a person is exempt from liability for remedial action under the spills law with respect to the existence of a hazardous substance in the soil, including sediments, on property possessed or controlled by the person if the same conditions are met. Further, the person must agree to take one or more of the following actions at the direction of

DNR, if after DNR has made a reasonable attempt to notify the party who caused the discharge of the hazardous substance about the party's responsibilities under the spills law, DNR determines that the action or actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment: (a) limit public access to the property; (b) identify, monitor and mitigate fire, explosion and vapor hazards on the property; and (c) visually inspect the property and install appropriate containment barriers.

Property owners who qualify for the off-site exemption do not have to request or receive approval from DNR in order to be exempt. However, DNR is authorized to, upon request, issue a written determination that the person is not required to respond to the discharge or reimburse DNR for the costs of responding to the discharge if DNR determines that the person qualifies for the exemption from liability. DNR may assess and collect fees from a person to offset the costs of issuing determinations to persons who request them. As of December 1, 2004, DNR had issued 183 off-site liability exemption letters.

### **DNR Technical Assistance**

DNR is authorized to provide various types of technical assistance and to assess and collect fees from the requester of services to offset the costs of providing assistance. Examples of types of technical assistance would include, upon request: (a) assisting persons who want to determine who is liable for environmental pollution of properties; (b) assisting in, or providing comments on the planning and implementation of an environmental investigation of a property or the environmental cleanup of a property; (c) determining whether further action is necessary to remedy environmental pollution of a property; and (d) issuing a letter to a person concerning the environmental liability of owning or leasing the property, the type and extent of contamination on the property or the adequacy of an environmental investigation of the site. As of December 1, 2004, DNR had issued 199 general

liability clarification letters, 15 letters concerning the environmental liability of leasing a property, and 28 expedited exemptions for building on abandoned landfills.

### **Cancellation of Delinquent Taxes**

Wisconsin Counties and the City of Milwaukee are authorized to cancel part or all of delinquent property taxes, interest and penalties on a contaminated property. In order to be eligible, an environmental assessment would have to show that contamination exists on a property and the property owner or potential owner would have to enter into an agreement with DNR to investigate and clean up the property. As of December 1, 2004, DNR has entered into eight cleanup agreements for tax delinquent contaminated sites. The agreement is submitted to the taxing authority, either a County or the City of Milwaukee, and that taxing authority determines whether all or a portion of the delinquent taxes will be canceled.

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### **Local Government Negotiation and Cost Recovery**

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Local governments (counties, cities, villages or towns) are authorized to negotiate with parties responsible for environmental pollution to share the costs of remedial action at the site of a facility where either: (a) the environmentally contaminated land is owned by the local government; or (b) a local government owns a portion of the site and commits itself to paying more than 50% of the amount equal to the costs of the investigation and remedial action costs less any financial assistance received for the site or facility. The negotiation procedure first applied to landfills beginning January 1, 1996, and to all other sites or facilities beginning May 13, 1994.

Before the local government may begin the

negotiation procedure, it must attempt to identify responsible parties, draft a remedial action plan, conduct a public hearing and obtain DNR approval of the plan. A responsible party would include: (a) an owner or operator at the time the property is taken for tax delinquency or at the time that the disposal or discharge of a hazardous substance at the site or facility occurs; (b) a generator; (c) a transporter; or (d) a person who possesses, controls or causes the discharge or disposal of a hazardous substance.

After DNR approves the remedial action plan, the local government may begin a negotiation process with any identified responsible parties by serving them with an offer to settle regarding the contribution of funds for the investigation and remedial action. The statutes set forth procedures for the negotiation process, including a method by which DNR selects a disinterested umpire to facilitate the negotiation. The local government and responsible parties may make an agreement regarding the contribution of funds. If they do not reach an agreement, the umpire makes a recommendation and the local government and responsible parties may choose whether or not to accept the recommendation.

The negotiation procedure has incentives to encourage the cooperation of responsible parties. If a responsible party enters into an agreement with a local government regarding the extent of the party's contribution of funds for the investigation or remedial action, or if the responsible party accepts the umpire's recommendation, the responsible party is not liable for any additional costs of the investigation or remedial action.

The negotiation procedure has disincentives for responsible parties who do not enter into an agreement or do not comply with the agreement. The local government may sue noncooperating responsible parties to recover a portion of the costs of the investigation and remedial action. In any lawsuit by the local government against

noncooperating responsible parties, the percentage of the total costs of the investigation and remedial action that are allocated to the responsible party equals the percentage of that party's contribution to the environmental pollution resulting from the discharge or disposal of hazardous substances at the site or facility.

As of December, 2004, there are four sites involved in the negotiation procedure. In September, 1997, DNR created a pilot cost-sharing program to allocate \$3,000,000 of existing general obligation bonding authority for construction projects at the landfills participating in the negotiation procedure. All of the pilot program funds have been allocated. The following three communities have completed the process necessary to receive pilot program reimbursement and have received reimbursement: (a) Rice Lake, \$750,000; (b) Amery, \$350,000; and (c) Grafton, \$400,000. The remaining \$1,500,000 has been reserved for the City of Waukesha. As of December 1, 2004: (a) the City and DNR made an agreement that DNR would make payments to the City after the City completes certain milestones; (b) the City notified DNR that two milestones had been completed; and (c) DNR had processed reimbursement requests totaling \$600,000 from the City under the pilot program.

Administrative rule Chapter NR 749 establishes a fee schedule used to offset DNR costs related to the negotiation and cost recovery process. The fees vary depending on the services that the local government requests from the Department.

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### **Dry Cleaner Environmental Response Program**

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The dry cleaner environmental response program was created in 1997 Act 27, effective October 14, 1997, and modified in 2003 Act 312, to provide financial assistance awards for reimbursement of certain eligible costs of investigation and remedial action of contamination from dry cleaning solvents

at current and certain former dry cleaning facilities. DNR administers the financial assistance and remediation components of the program. The Department of Revenue (DOR) collects the fees created to support the program.

Statutes related to reimbursement of claims under the program are contained in s. 292.65. The program is also administered through rule Chapter NR 169, effective February 1, 2000. DNR began paying awards in the summer of 2000.

### **Revenue**

The segregated dry cleaner environmental response fund provides revenues for the dry cleaner environmental response program. Revenues received under the program totaled \$7,500,500 in 1997-98 through 2003-04 (including \$1,146,600 in 2002-03 and \$1,043,100 in 2003-04) and are anticipated to generate approximately \$1.1 million in 2004-05.

DOR is required to issue a dry cleaning facility license to each person who submits the required application form. The license is valid until surrendered or transferred by the dry cleaner, or revoked by DOR. If a dry cleaning facility is sold, the seller is authorized to transfer the license to the buyer. Suppliers of dry cleaning solvent are prohibited from selling and delivering dry cleaning solvent to a dry cleaning facility that does not hold a valid dry cleaner facility license.

DOR is required to collect the following revenues from operators of dry cleaning facilities and sellers of dry cleaning products and deposit them into the dry cleaner environmental response fund:

1. A dry cleaning fee paid by every operator of a dry cleaning facility equal to 1.8% of the gross receipts from the previous three months from dry cleaning, due on April 25, July 25, October 25, and January 25;
2. A dry cleaning products fee imposed on

persons who sell a dry cleaning solvent to a dry cleaning facility equal to \$5.00 per gallon of perchloroethylene sold and \$0.75 per gallon of any dry cleaning product other than perchlorethylene sold, which is due on April 25, July 25, October 25, and January 25 for the previous three months;

3. A late filing fee, interest, and negligency penalty after the due date of the quarterly due date for the dry cleaning facility license fee; and

4. Any recovery of fraudulent awards.

For purposes of the fees under the program, "dry cleaning facility" is defined as a facility that dry cleans apparel or household fabrics for the general public using a dry cleaning product, other than the following facilities: (a) coin-operated facilities; (b) facilities that are located on U.S. military installations; (c) industrial laundries; (d) commercial laundries; (e) linen supply facilities; (f) facilities that are located at a prison or other penal institution; (g) facilities that are located at a nonprofit hospital or at a nonprofit health care institution; (h) facilities that are located on property that is owned by the U.S. government or by the state of Wisconsin; and (i) formal wear rental firms.

### **Eligible Applicants**

Owners or operators of dry cleaning facilities can apply for financial assistance to clean up contamination from dry cleaning products associated with their facility. An "owner" is defined as: (a) a person who owns, or has possession or control of, and who receives or received direct or indirect consideration from the operation of any of the following: (1) a dry cleaning facility that has a dry cleaning facility license issued by DOR; (2) a dry cleaning facility that has ceased operation, but that if it ceased operation on or after October 14, 1997, was licensed before it ceased operation; (b) a subsidiary or parent corporation of the owner described under (a); or (c) a person who owns the

property on which one of the following is located: (1) a licensed dry cleaning facility; or (2) a dry cleaning facility that has ceased operation but that was licensed before it ceased operation and was licensed and operating while the person owned the property. An "operator" is defined as: (a) a person who holds a dry cleaning facility license issued by DOR; (b) a subsidiary or parent corporation of a person who holds a dry cleaning facility license; (c) a person who operated a dry cleaning facility that ceased operating before October 14, 1997; or (d) a person who operated a dry cleaning facility that ceased operation after October 13, 1997, if the facility had a dry cleaning facility license before it ceased operation.

Owners or operators of dry cleaning facilities who want to participate in the program are required to do the following: (a) report a dry cleaning product discharge to DNR in a timely manner; (b) notify DNR, before conducting a site investigation or any remedial action activity, of the potential for submitting an application for an award under the program (this is not required for an owner or operator who began a site investigation or remedial action activity before October 14, 1997); (c) conduct an investigation to determine the extent of environmental impact of the dry cleaning solvent discharge; (d) prepare a remedial action plan that identifies specific remedial action activities proposed to be conducted; and (e) conduct remedial action activities, including recover any recoverable dry cleaning product, manage any residual solid or hazardous waste in accordance with law, and restore groundwater in accordance with DNR administrative rules.

An owner or operator may enter into a written agreement with another person where the person acts as an agent for the owner or operator to conduct the cleanup activities.

Owners or operators of dry cleaning facilities must implement certain enhanced pollution

prevention measures in order to be eligible for a financial assistance award. In general, an owner or operator must implement the following: (a) the owner or operator manages wastes involving dry cleaning products in compliance with certain federal laws; (b) the dry cleaning facility does not discharge dry cleaning product or wastewater from dry cleaning machines into a sanitary sewer, septic system or waters of the state; (c) all machines or equipment that use dry cleaning products have appropriate containment structures that are able to contain any leak, spill or other release of dry cleaning products from the machines or other pieces of equipment; (d) floors are sealed or otherwise impervious to dry cleaning products; and (e) dry cleaning products are delivered to the facility by means of a closed, direct-coupled delivery system.

Owners or operators of dry cleaning facilities have until August 30, 2008, to submit a notification to DNR of the potential for submitting a claim under the program. (This must be done before conducting a site investigation or remedial action activity.) Prior to enactment of 2003 Act 312, owners or operators had until August 20, 2008, to submit a claim for reimbursement. (This would have occurred only after completion of the site investigation and remedial action activity.) Thus, the current August 30, 2008, deadline is for a very early stage of the cleanup process instead of after completion of the cleanup (previously).

### **Eligible and Ineligible Costs**

Eligible reimbursable costs under the program include reasonable and necessary costs paid for the following items only: (a) removal of dry cleaning products from surface waters, groundwater or soil; (b) investigation and assessment of contamination caused by a dry cleaning product discharge from a dry cleaning facility; (c) preparation of remedial action plans; (d) removal of contaminated soils; (e) soil and groundwater treatment and disposal; (f) environmental monitoring; (g) laboratory services; (h) maintenance of equipment for dry cleaning

product recovery performed as part of remedial action activities; (i) restoration or replacement of a private or public potable water supply; (j) restoration of environmental quality; (k) contractor costs for remedial action activities; (l) inspection and supervision; (m) other costs that DNR determines to be reasonable and necessary; and (n) costs up to \$15,000 incurred by a third party in the discovery of a discharge of a dry cleaning product from an eligible owner's or operator's dry cleaning facility before the owner or operator discovered the discharge.

Ineligible costs include the following: (a) costs incurred before October 14, 1997 (prior to this modification enacted in 2003 Act 312, the date was January 1, 1991); (b) costs of retrofitting or replacing dry cleaning equipment; (c) other costs that DNR determines to be associated with, but not integral to, the investigation and remediation of a dry cleaning products discharge from a dry cleaning facility; (d) unreasonable or unnecessary costs; (e) costs for investigations or remedial action activities conducted outside Wisconsin; (f) costs for discharges from hazardous substances other than dry cleaning products; and (g) costs of financing eligible activities.

DNR is required to deny an application for an award if any of the following applies: (a) the application is not within the scope of the program; (b) the applicant submits a fraudulent application; (c) the applicant has been grossly negligent in the maintenance of the dry cleaning facility; (d) the applicant intentionally damaged the dry cleaning equipment; (e) the applicant falsified records; (f) the applicant willfully failed to comply with laws or rules of the state concerning the use or disposal of dry cleaning solvents; (g) the fees required under the program have not been paid; and (h) the dry cleaning products discharge was caused on or after October 14, 1997, by a person who provided services or products to the owner or operator including a person who provided perchloroethylene to the owner or operator using a system other than a closed, direct-coupled delivery system.

DNR is required to subtract an amount equal to one-half of ineligible costs claimed by an owner from the eligible costs of the claim, after removing the ineligible costs from the claim. A person other than an owner or operator is assessed a fee equal to 50% of the ineligible costs if the claim was prepared by the person other than the owner or operator. The person may not charge the owner or operator for any of the amount the person is required to pay under this provision. NR 169 identifies the ineligible costs to which the penalty would apply.

DNR is authorized to establish a schedule of usual and customary costs for any eligible costs and use the schedule to determine the amount of a claimant's eligible costs. DNR is authorized to promulgate rules under which it selects service providers to provide investigation or remedial action activities in specified areas. DNR may limit reimbursement of eligible costs to the amount that the selected service provider would have charged, if an owner or operator uses a different service provider than the one selected by DNR. As of January 1, 2005, DNR had not promulgated rules related to these provisions. However, the Department has established, in NR 169, requirements for soliciting bids for completing a site investigation and remedial action.

### **Award and Deductible Provisions**

The Department pays an award to reimburse an applicant for eligible costs paid if DNR finds that the applicant meets the requirements of the program and rules promulgated under the program. DNR is required to approve the completed site investigation and remedial action activities before paying an award.

DNR is required to first allocate 9.7% of the financial assistance funds appropriated in each year for awards for immediate action activities and applications that exceed the amount anticipated. An immediate action is a remedial action that is

taken within a short time after a discharge of dry cleaning product occurs, or after the discover of the discharge, to halt the discharge, contain or remove discharged dry cleaning product, or remove contaminated soil or water in order to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to air, lands, and waters of the state and to eliminate any imminent threat to public health, safety, or welfare. To date, DNR has not reimbursed any costs for immediate action activities.

The original program created in 1997 Act 27 required DNR to pay for costs incurred between January 1, 1991, and before October 14, 1997 ("past costs"). Chapter NR 169 required all applications for reimbursement of past costs to be submitted to DNR by April 30, 2000.

DNR uses the remaining funds for reimbursement of site investigations and remedial actions. DNR is required to establish a method for determining the order in which it pays awards, and to base the method on environmental factors and on the order in which applications are received. Under Chapter NR 169, DNR assigns applications to one of three site hazard categories after reviewing an interim action options report or remedial action options report. DNR allocates the funds for interim remedial action equipment, site investigations and remedial actions between the three categories. The categories and allocation are:

1. High-priority sites are allocated 25% of available funds and consist of sites that DNR determines pose an imminent risk to human health or the environment. Examples include sites where the dry cleaning product has contaminated public or private drinking water supplies in concentrations that exceed the health-based standard for the contaminant or where contamination of the drinking water supply is imminent.
2. Medium-priority sites are allocated 60% of available funds and consist of sites that DNR

determines pose a significant risk to human health or the environment, or both. Examples include sites where there is contamination of a water supply below health standards or impacts above an environmental standard to surface water or wetlands.

3. Low-priority sites are allocated 15% of available funds and consist of sites that pose a risk to human health or the environment, or both. Examples include sites with soil contamination that is not migrating to groundwater or surface water or where contamination levels are below health-based standards and are not expected to increase over time.

The maximum award is \$500,000 for reimbursement for costs incurred at a single dry cleaning facility. The owner or operator must pay a deductible equal to the following: (a) if eligible costs are \$200,000 or less, \$10,000; (b) if eligible costs are \$200,001 to \$400,000, \$10,000 plus 8% of the amount by which eligible costs exceed \$200,000; and (c) if eligible costs exceed \$400,000, \$26,000 plus 10% of the amount by which eligible costs exceed \$400,000.

DNR may waive collection of the deductible if the owner or operator is unable to pay. If the deductible is waived, DNR records a lien on the property until the deductible amount is paid. DNR has waived the deductible for and filed a lien on one property as of September, 2004.

If an owner or operator receives payment from another person, including an insurance company, or receives a tax credit, for any eligible cleanup costs before submitting a claim for reimbursement under the program, DNR is required to reduce the award by the amount by which the payments from the other person exceed the sum of the deductible and any eligible costs that exceed the maximum reimbursement amount, up to the maximum award. If an owner or operator receives payment from another person, including from an insurance company or as a tax credit based on eligible costs, after receiving an award under the program, the

owner or operator must pay to DNR the amount by which the payment or tax credit exceeds the difference between the total amount of eligible costs and the amount of the award. DNR is required to deposit any amounts collected under these provisions in the dry cleaner environmental response fund.

### Appropriations

In 2004-05, DNR is provided with \$189,000 with 3.0 positions from the segregated dry cleaner environmental response fund for administration of the financial assistance and remediation components of the program. This includes \$127,800 with 2.0 positions in the Bureau for Remediation and Redevelopment to administer cleanup requirements and \$61,200 with 1.0 position in the Bureau of Community Financial Assistance to administer financial assistance requirements. DNR is appropriated \$1,050,000 in 2003-04 and \$1,050,000 in 2004-05 in a biennial appropriation for financial assistance awards under the program. In 2004-05, DOR is provided with \$53,200 with 1.0 position for administration of the revenues collected under the program.

The estimated condition of the segregated dry cleaner environmental response fund is shown in Table 5. Revenues totaled \$1.0 million in 2003-04 and are expected to total approximately \$1.1 million in 2004-05. Expenditures totaled \$764,100 in

**Table 5: Dry Cleaner Environmental Response Fund, Condition 2003-05 (\$ in Millions)**

	2003-04 Actual	2004-05 Estimated
Opening Balance, July 1	\$2.6	\$2.8
Revenue	<u>1.0</u>	<u>1.1</u>
Total Revenue Available	\$3.6	\$3.9
Expenditures	<u>-0.8</u>	<u>-1.8*</u>
Closing Balance	\$2.8	\$2.1

\*Includes \$0.5 million carried over from the 2003-04 biennial awards appropriation.

2003-04, including \$508,000 for dry cleaner environmental response awards and \$256,100 for DNR and DOR administration. Expenditures are authorized at \$1,834,200 in 2004-05, which is higher than the 2003-04 actual expenditures because \$542,000 in unexpended funds is carried over from the financial assistance biennial appropriation for expenditure in 2004-05.

Table 6 shows the cumulative amount of program costs for financial assistance awards and administration by fiscal year.

**Table 6: Dry Cleaner Environmental Response Program Costs Paid by Fiscal Year**

	Dry Cleaner Awards	DNR & DOR Administration	Total
1997-98	\$0	\$51,944	\$51,944
1998-99	0	136,054	136,054
1999-00	0	154,613	154,613
2000-01	1,102,518	180,611	1,283,129
2001-02	592,530	201,710	794,240
2002-03	1,218,745	245,127	1,463,872
2003-04	507,983	256,076	764,059
2004-05*	<u>1,592,017</u>	<u>242,200</u>	<u>1,834,217</u>
Total	\$5,013,793	\$1,468,334	\$6,482,128
Percent	77.3%	22.7%	100.0%

\*Budgeted.

## Participation

As of December 1, 2004, DNR had paid \$4,325,183 for 82 claims for 41 eligible dry cleaner facility sites. The distribution of the category of claims is shown in Table 7. Of the 82 claims paid, \$549,340 (13%) and 11 claims were for past costs that were incurred before the October 14, 1997, effective date of the program. No costs were for reimbursement of immediate actions. DNR was also reviewing 11 other claims totaling \$549,340. DNR is also aware of at least 85 other sites that may request reimbursement under the program

but have not yet done so.

## Use of Environmental Fund

If DNR uses the state-funded response appropriation from the segregated environmental fund to pay for a cleanup of a discharge of dry cleaning solvent at a dry cleaning facility and there is a person who would be an eligible owner or operator for the dry cleaning facility, DNR is required to transfer an equal amount of money from the dry cleaner environmental response financial assistance appropriation to the environmental fund when sufficient funds are available. DNR has determined that owners of three dry cleaning facilities are unable to pay for the cleanup. The dry cleaner financial assistance appropriation reimbursed the environmental fund for \$64,300 of cleanup expenditures in 2002-03. DNR estimates that an additional \$181,000 in investigation costs will be incurred by the environmental fund and reimbursed by the dry cleaner environmental response appropriation.

## Liability

Under the program, conducting a cleanup or applying for an award under the program is not an admission of liability for environmental pollution. The program does not supersede common law or statutory liability for damages from a dry cleaning facility. An award under the program would be the exclusive method for the recovery of eligible costs.

**Table 7: Dry Cleaner Environmental Response Program Claims Paid by Category, as of December 1, 2004**

	Claims	Amount
Past Costs	11	\$549,340
High Priority	3	266,335
Medium Priority	52	2,975,539
Low Priority	<u>16</u>	<u>533,969</u>
Total	82	\$4,325,183

If a person conducts a remedial action activity for a discharge at a dry cleaning facility site, whether or not the person files an application under the program, the remedial action activity conducted and any application filed under the program would not be evidence of liability or an admission of liability for any potential or actual environmental pollution.

### **Dry Cleaner Environmental Response Council**

A six-member Dry Cleaner Environmental Response Council advises DNR concerning the program. The Council consists of the following members appointed by the Governor for three-year terms: (a) one representative of dry cleaning operations with annual gross receipts of less than \$200,000; (b) two representatives of dry cleaning operations with annual gross receipts of at least \$200,000; (c) one representative of wholesale distributors of dry cleaning solvent; (d) one engineer or hydrogeologist with knowledge, experience or education concerning environmental remediation; and (e) one representative of manufacturers and sellers of dry cleaning equipment.

The Council is required to evaluate the program at least every five years, based on criteria developed by the Council. In December, 2001, the Council included an addendum to the DNR report described in the following section. The Council supported the recommendations of the DNR report. The next report from the Council can be expected in late 2006.

### **Program Sunset and Review**

The program and fees have a statutory sunset of June 30, 2032 (35 years after creation). DNR was required to complete a review of the program and submit a report on the results of the review to the Joint Committee on Finance and the appropriate standing committees of the Legislature. DNR submitted the required report to the Legislature in December, 2001. The report included the following

recommendations: (a) maintenance of adequate program funding is crucial; (b) the partnership that exists between DNR, DOR and the dry cleaning industry needs to be maintained; (c) DNR, DOR and the industry need to continue and enhance the communication and outreach related to the program; (d) DOR should streamline its management, implementation and enforcement of revenue collections for the program; (e) DNR should continue to participate in the States Coalition for the Remediation of Dry Cleaners (a coalition of several states); and (f) DNR, DOR and industry should pursue statutory changes to improve the program. DNR and industry representatives recommended several changes, many of which were enacted in 2003 Act 312.

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### **Brownfield Site Assessment Grant Program**

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The brownfield site assessment grant program was created in 1999 Act 9 to provide local governments with grants to perform the initial investigation of contaminated properties and certain other eligible activities. DNR administers the program from a biennial appropriation from the environmental management account of the environmental fund. DNR was provided with \$1,450,000 in the 1999-01 biennium, and with \$1,700,000 annually from fiscal years 2001-02 through 2004-05. Cumulative funding for the program is \$8,250,000 through 2004-05.

Statutes related to grants under the program are contained in s. 292.75 of the statutes. The program is also administered through administrative rule Chapter NR 168, effective July 10, 2000.

### **Eligible Applicants and Sites**

Local governments may apply for a site assessment grant for eligible sites or facilities. A local government includes a city, village, town, county, tribe, redevelopment authority, community

development authority and housing authority.

A local government is not eligible for a grant if it caused the environmental contamination that is the basis of the grant request. DNR may only award a grant if the person that caused the environmental contamination that is the basis for the grant request is unknown, cannot be located or is financially unable to pay the cost of the eligible activities.

A site or facility is eligible for a grant if it is an abandoned, idle or underused industrial or commercial facility or site, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination. A local government does not have to own the site but must have access to it to complete the grant activities.

### **Eligible Costs and Grant Criteria**

The following activities are eligible for a site assessment grant at an eligible site or facility: (a) phase I and II environmental assessments; (b) site investigation of environmental contamination; (c) demolition of structures, buildings or other improvements; (d) asbestos abatement, if it is a necessary part of demolition activity; and (e) removal and proper disposal of abandoned containers, underground petroleum product storage tank systems or underground hazardous substance storage tank systems.

The local government is required to contribute matching funds equal to 20% of the grant amount, which may be in the form of cash or an in-kind contribution or both. Grants to an individual local government may not exceed 15% of the total amount appropriated for the program in the fiscal year.

Before awarding a grant, DNR is required to consider the local government's commitment to completing the remediation activities on the

eligible site, the degree to which the project will have a positive impact on public health and the environment, and other criteria. Administrative rule NR 168 establishes a point scoring system to rank applications when grant requests exceed available funding. Points are awarded for the following criteria: (a) location within a source water protection area for certain drinking water supplies; (b) close to a school, park or residence; (c) an eligible site that has contamination readily accessible to the public or if the applicant has taken action to limit access to a hazard or contamination at the site; (d) a site that will remain under the ownership of a local government or non-profit organization; (e) a site for which the local government has initiated the formal acquisition process or holds title to the site; (f) if more than \$2,000 in eligible past costs have been incurred; (g) additional matching funds provided by the applicant or any local government above the required 20% match; (h) a vacant or abandoned site or facility; and (i) if a site or facility is or was tax delinquent during certain time periods. In addition, an applicant may assign a one-time bonus of 29 points to one application for a large project and one application for a small project that it considers to be a priority. If two or more applications receive the same score, applications requesting the smallest dollar amounts are funded first.

NR 168 allocates 60% of the grant funds to small grants between \$2,000 and \$30,000. The remaining 40% of grant funds are allocated to large grants between \$30,001 and \$100,000.

### **Participation**

DNR made the first grant awards under the site assessment grant program in the fall of 2000. Site assessment awards as of January 1, 2005, are listed in Appendix III and include 205 grants to 113 different municipalities for \$6,550,000 awarded under the four fiscal years of 2000-01 through the 2003-04 grant cycles. The City of Milwaukee and

City of Milwaukee Redevelopment Authority in combination received the largest amount of grants, with 33 grants for \$893,579, equaling 13.6% of awarded grant dollars. DNR had a November 12, 2004, deadline for applications for 2004-05 awards and received 76 applications for \$3,132,500 in grants. DNR will award 2004-05 grants in approximately February, 2005.

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### **Sustainable Urban Development Zone Program**

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1999 Act 9 created a sustainable urban development zone pilot program and provided \$2,380,000 SEG in 1999-00 from the environmental management account of the environmental fund. DNR was required to develop and administer a pilot program, in consultation and cooperation with DOA and the Department of Commerce, and the Cities of Milwaukee, Green Bay, La Crosse, Oshkosh and Beloit, that promotes the use of financial incentives to cleanup and redevelop contaminated properties in the five cities. The state funds may be used to investigate environmental contamination and cleanup brownfields properties in the cities.

Act 9 designated that specific amounts be available as grants to the five cities. A partial veto by the Governor resulted in an appropriation of \$2,380,000 instead of the funding designation total of \$2,450,000 for the five cities. Each of the cities was awarded a prorated grant amount.

2001 Act 16 provided \$525,000 SEG in 2001-02 from the environmental management account for the program, specified grant amounts for the Cities of Platteville and Fond du Lac, and specified that the remaining \$125,000 would be awarded to municipalities through a competitive process. 2001 Act 109 deleted the \$125,000 in undesignated funding and transferred that amount from the environmental management account to the general

fund. The program was repealed in 2003 Act 33.

The grant amounts and activities funded through the grant agreements between DNR and each of the seven specified cities are described below. Work was completed in all of the cities except La Crosse and Platteville by December, 2004. Both of those cities had legal problems in acquiring property in their project areas. La Crosse received an extension of the deadline for completion of work until December, 2005. As of December, 2004, DNR expected that Platteville would also request an extension of their completion deadline.

*Milwaukee.* \$971,429 to investigate and cleanup contamination at Menomonee River Valley properties that used to house railroad car and engine construction and repair and rail car switching and storage.

*Green Bay.* \$485,714 to assess, investigate and remediate several properties, primarily the old bus station, for commercial, residential and recreational open space use.

*La Crosse.* \$485,714 to investigate area-wide environmental contamination in redevelopment areas north and south of the La Crosse River in order to create a mixed-use recreational and commercial development.

*Oshkosh.* \$242,857 to assess, investigate and remediate the old Universal Foundry site between the downtown and University of Wisconsin - Oshkosh.

*Beloit.* \$194,286 to investigate and cleanup contamination at a former manufactured gas plant in order to possibly redevelop the property as residential condominiums.

*Platteville.* \$150,000 to complete an investigation begun with site assessment grants at three former commercial and light industrial properties, in order

to redevelop the property for mixed-income housing.

*Fond du Lac.* \$250,000 to investigate and cleanup contamination primarily at the former Quick Freeze industrial property and three other sites, in order to redevelop the properties as a recreational trail, mixed housing and office space.

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### Brownfields Green Space and Public Facilities Grant Program

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2001 Act 16 created a brownfields green space grant program and required that DNR make awards to local governments for brownfields remediation projects that have a long-term public benefit, including the preservation of green space, the development of recreational areas, or the use of a property by the local government.

Statutes and regulations for grants under the program are contained in s. 292.79 of the statutes and administrative rule Chapter NR 173, which took effect as an emergency rule on August 28, 2002, and as a permanent rule on December 1, 2002. The rule titles the program "Brownfield Green Space and Public Facilities Grant Program." Remedial action activities are eligible for reimbursement.

2001 Act 16 provided \$1,000,000 in 2001-02 in a biennial appropriation from the environmental management account of the environmental fund, but provided no ongoing funding. DNR received the first grant applications in January, 2003. However, 2003 Act 1 deleted the \$1,000,000 SEG and no grant awards were made in the 2001-03 biennium. 2003 Act 33 provided ongoing funding of \$500,000 SEG in each of 2003-04 and 2004-05 in the biennial appropriation. Act 33 allowed DNR to review applications received by DNR by January 17, 2003, rank them under the 2002-03 scoring

criteria for green space grants, and make awards totaling up to \$1,000,000 to applicants that would have been eligible for grants in 2002-03.

NR 173 requires the local government applicant is required to provide a match equal to 20% of the grant amount if the grant is \$50,000 or less, 35% if the grant is greater than \$50,000 and less than \$100,000, or 50% if the grant is \$100,000 to \$200,000. The rule sets a maximum grant amount of \$200,000. The local government may include as match, grant eligible expenses and non-reimbursable expenses such as costs for property acquisition, site investigation, demolition of buildings or structures, asbestos abatement associated with demolition, removal of debris or waste, environmental assessment, and planning and design of the green space or local government use.

The rule requires DNR to award at least 20% of the total funding to applications for \$50,000 or less. DNR scores applications based on criteria including the demonstrated need for the project, commitment of the applicant, environmental benefits and financial commitment to the project.

In April, 2004, DNR awarded 11 green space grants totaling \$1,000,000 to 10 communities. This used the available funding for the 2003-05 biennium. These grants are shown in Table 8.

**Table 8: Greenspace and Public Facilities grants as of January 1, 2005**

Grant Recipient	Number of Grants	Grant Amount
Delavan	1	\$200,000
Eau Claire	1	5,000
Fond du Lac	1	50,000
Geneva, Town of	1	25,449
Kenosha	1	84,585
Madison	1	87,745
Milwaukee	2	325,000
Oshkosh	1	200,000
Waukesha	1	4,000
West Allis	<u>1</u>	<u>18,221</u>
Total	11	\$1,000,000

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## Funding for DNR Administration

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### DNR Appropriations

Funding for DNR administration for state and federal contaminated land and brownfields cleanup programs comes from general purpose revenues, program revenues from fees for certain requests for DNR actions related to contaminated properties, payments from responsible parties, segregated revenues from the environmental management account of the environmental fund and federal funds. For 2004-05, DNR has 94.59 staff

and appropriations of \$7.8 million in the remediation and redevelopment program for administration of contaminated land and brownfields cleanup programs, as shown in Table 9.

In addition, Department staff perform administrative or support functions in the Division of Air and Waste, and in the Divisions of Enforcement and Science, Administration and Technology and Customer Assistance and External Relations. These staff positions are funded from the general fund, environmental fund, dry cleaner environmental response fund and federal revenues.

**Table 9: Authorized Staff and Administrative Appropriations for DNR's Bureau for Remediation and Redevelopment and Regional Remediation and Redevelopment Staff -- 2004-05**

Funding Source	Staff		Appropriation
	Permanent Positions	Project Positions	
<b>General Fund</b>			
Bureau for Remediation and Redevelopment - administration	11.5		\$943,000
<b>Program Revenue</b>			
Purchaser liability and municipality negotiation and cost recovery	12.0		994,500
Solid and hazardous waste administration	2.5		163,200
GIS Groundwater Registry	---		263,400
Department of Transportation Contract	---		203,800
<b>Segregated Funds</b>			
Environmental Fund – administration	26.09*		1,380,800
Petroleum Inspection Fund - PECFA cost control and brownfields administration	4.0		302,000
Dry Cleaner Environmental Response Fund – administration	2.0		133,500
<b>Federal Funds</b>			
Superfund administration	18.0	1.0	1,275,600
Brownfields administration	0.0	3.0	1,038,800
Hazardous waste administration	1.5		222,600
LUST – administration	12.0	0.0	749,600
Other Federal funds	<u>0.0</u>	<u>1.0</u>	<u>141,100</u>
<b>TOTAL</b>	<b>89.59</b>	<b>5.0</b>	<b>\$7,811,900</b>

\*2003 Act 33 reduced the environmental fund appropriation by \$792,000 in the Remediation and Redevelopment program in each of 2003-04 and 2004-05, but it did not make a reduction in the number of authorized positions. DNR may need to hold up to nine authorized positions vacant to accomplish the required expenditure reduction. The Governor and Department of Administration authorized the use of nine temporary federal brownfields positions beyond the number shown under federal funding, to offset reduced expenditure levels.

## Environmental Fund Revenues

The segregated environmental fund is primarily used for DNR program activities related to groundwater management, remediation and redevelopment and nonpoint source water pollution abatement programs. [Further information about the nonpoint program can be found in the Legislative Fiscal Bureau Informational Paper entitled, "Nonpoint Source Water Pollution and Soil Conservation Programs."] The environmental management account of the environmental fund includes appropriations for DNR administrative, enforcement, preventative, cleanup and groundwater management activities. It also funds environmental programs administered by other state agencies, including the Department of Commerce, the Department of Health and Family Services, the Department of Military Affairs and the University of Wisconsin System.

The estimated condition of the environmental management account of the environmental fund is shown in Table 10. Revenues to the environmental management account of the environmental fund are generated from several fees that totaled approximately \$28.0 million in 2002-03 and \$28.6 million in 2003-04, as shown in Table 11. These revenues are described in the following section. Table 12 shows the landfill fees paid to the environmental management account. Appendix IV lists appropriations from the environmental management account of the environmental fund during 2003-05.

**Vehicle Environmental Impact Fee.** A \$9 per vehicle fee is assessed at the time of titling new and used vehicles. Between December 1, 1999, and September 30, 2001, the fee was \$6 per vehicle. Between December 1, 1997, the effective date of the fee, and November 30, 1999, the fee was \$5 per vehicle. The Department of Transportation collects the fees and deposits them in the environmental fund. The fee is repealed on December 31, 2005.

**Table 10: Environmental Management Account of the Environmental Fund, Condition 2003-05 (\$ in Millions)**

	2003-04 Actual	2004-05 Estimated
Opening Balance, July 1	\$21.3	\$22.9
Revenue	<u>28.6</u>	<u>29.8</u>
Total Revenue Available	\$49.9	\$52.7
Expenditures	-\$26.2	-\$26.4
Transfer to General Fund	-0.8	-0.9
Encumbrances, Continuing Balances and Reserves	0.0	-21.3
Closing Balance, June 30	\$22.9	\$4.1

**Table 11: Environmental Fund Revenues for the Environmental Management Account, 2002-03 and 2003-04**

Revenue Source	2002-03 Revenue	2003-04 Revenue
Vehicle Environmental Impact Fee	\$13,699,500	\$13,598,000
Environmental Repair Tipping Fee	3,546,100	3,938,600
Site Specific (Fox River) Remediation	2,927,600	4,782,200
Petroleum Inspection Fund	1,816,300	1,816,300
Pesticide and Fertilizer Fees	1,338,800	1,375,800
Transfer from Tribal Gaming Revenues	1,000,000	0
Groundwater Waste Generator Tipping Fee	785,600	869,900
Hazardous Spill Reimbursement	620,100	147,400
Hazardous Waste Generator Fee	533,000	548,600
Sanitary Permit Surcharge	489,500	539,700
Well Compensation Tipping Fee	314,400	348,000
Nonmetallic Mining Fees	162,600	151,100
Environmental Assessment	113,800	141,000
Dry Cleaner Response Reimbursement	64,300	0
Land Disposal Permit	63,100	68,400
Septic System Servicing Fee	48,200	11,300
Bulk Tank Surcharge	23,000	21,600
Environmental Repair Surcharge	5,800	4,100
Environmental Repair Base Fee	4,100	4,100
Civil Action Damages	2,500	14,900
Cooperative Remedial Action	800	300
Investment Income	361,300	219,600
Miscellaneous Revenue	<u>38,600</u>	<u>8,500</u>
Total	\$27,959,000	\$28,609,400

**Environmental Repair Tipping Fee.** Fees paid by a waste facility into the environmental management account are based on: (a) annual tonnage; (b) whether the facility disposes of high-volume industrial waste or other waste; and (c) whether the facility is an "approved" or

**Table 12: Landfill Fees for the Environmental Fund\***

	Approved Landfills Per Ton	Nonapproved Landfills	
		With Closure Agreement Per Ton	Without Closure Agreement Per Ton
<b>Environmental Repair Fee:</b>			
Municipal and Non High-Volume Industrial	50¢	50¢	50¢
High-volume Industrial	20¢	20¢	20¢
Groundwater Fee	10¢	10¢	10¢
Well Compensation Fee	4¢	4¢	4¢
<b>Nonapproved Facility Fees and Surcharge:</b>			
Solid Non-Hazardous Waste	---	1.875¢	2.25¢
Hazardous Waste	---	18.75¢	22.5¢
		Annual Fee	Annual Fee
Environmental Repair Base Fee**	---	\$100	\$1,000

\* In addition to the fees deposited in the environmental fund, waste facilities pay a Solid Waste Facility Siting Board fee of 1.7¢ per ton; a program revenue fee for landfill administration of 9¢ per ton until March 31, 2004, 12¢ between April 1, 2004, and June 30, 2004, 14¢ between July 1, 2004, and June 30, 2005, and 15¢ beginning July 1, 2005; and, for waste that is not high-volume industrial waste, a recycling tipping fee of \$3.00 per ton.

\*\* The amount of the environmental repair base fee is deducted from the total tonnage and surcharge fees.

"nonapproved" facility.

Solid and hazardous waste facilities (landfills) pay a tipping fee for each ton of waste, except materials used for lining, daily cover, capping or constructing berms, dikes or roads within the facility. Facilities that dispose of municipal, hazardous or non-high volume industrial waste pay 50¢ per ton and facilities that dispose of only high-volume industrial waste pay 20¢ per ton (high-volume industrial waste includes paper mill sludge, bottom ash, foundry process waste and fly ash).

In addition, nonapproved facilities pay 1.5¢ per ton of solid non-hazardous waste disposed and 15¢ per ton of hazardous waste. (There are no hazardous wastes disposed of in Wisconsin at this time and thus, no revenue is generated from hazardous waste tonnage fees.) Nonapproved facilities also pay an environmental repair surcharge equal to 25% of the tonnage fee if the

facility has a closure agreement, or 50% of the tonnage fee if the facility does not have a closure agreement.

**Site Specific (Fox River) Remediation.** 2001 Act 16 specified certain revenues to be deposited in the environmental management account, and created an appropriation to expend the moneys for the purposes received for remediation at specific sites. The revenues include all moneys received: (a) in settlement of actions initiated under federal CERCLA regulations (Comprehensive Environmental Response, Compensation and Liability Act); and (b) all moneys received under court approved settlement agreements or orders, in settlement of actions or proposed actions for violations of environmental statutes, that are designated to be used to restore or develop environmental resources, to provide restitution or to make expenditures required under the order or agreement. Any revenues received under this provision can be used only for the purposes for which received. Almost all of the revenues received to date and expected to be received during the 2003-05 biennium relate to cleanup of PCBs (polychlorinated biphenyls) in a stretch of the Fox River from Lake Winnebago to Green Bay.

**Petroleum Inspection Fund.** An annual appropriation of \$1,816,300 in 2003-04 and \$1,816,300 in 2004-05 is made from the petroleum inspection fund to the environmental fund. The appropriation includes \$766,900 in each year for groundwater management and \$1,049,400 in each year (including \$80,000 for well compensation) for environmental repair. A petroleum inspection fee of 3¢ per gallon is assessed on all petroleum products brought into the state. The fee generates approximately \$117 million annually. Fee revenues are deposited in the segregated petroleum inspection fund and are used primarily to fund cleanup of petroleum-contaminated sites under the PECFA program.

**Pesticide and Fertilizer Fees.** License fees are

assessed annually on manufacturers and labelers of pesticides and collected by DATCP. The fees are deposited in the environmental management account. Of the total registration fee (which ranges from \$265 to \$3,060 based on the annual sales), \$124 per each household pesticide product licensed and \$94 per each nonhousehold pesticide product licensed is deposited in the environmental fund. The remaining fees are deposited in the segregated agrichemical management fund.

License applicants also pay a cleanup surcharge, which is deposited in the environmental fund, for nonhousehold pesticide products that are wood preservatives solely labeled for use on wood and that contain pentachlorophenol or coal tar creosote. The surcharge ranges from \$5 if sales of the product in the state are less than \$25,000 to 1.1% of gross revenues if sales of the product exceed \$75,000 in the state.

Further, persons who sell or distribute fertilizer or who distribute a soil or plant additive in Wisconsin are required to pay a groundwater fee, which is deposited in the environmental fund, of 10¢ per ton of fertilizer, with a minimum fee of \$1 for aggregate sales of 10 tons or less.

Finally, producers of pesticides must pay a well compensation fee of \$150 annually. The fees are collected by DATCP and deposited in the environmental fund.

**Transfer from Tribal Gaming Revenue.** Tribal gaming agreements with the state contain provisions for payments of certain monies by tribes to the state. Tribal gaming revenues are appropriated for a variety of purposes. Under 2001 Act 16, \$500,000 was transferred from tribal gaming revenues to the environmental management account in 2001-02 and \$1,000,000 was transferred in 2002-03. No transfers from tribal gaming revenue are authorized during the 2003-05 biennium.

**Groundwater Waste Generator Fee.** To support groundwater programs, solid and hazardous waste disposal facilities pay a waste generator fee of 10¢ per ton of waste disposed of at the facility, except materials used for lining, daily cover, capping or constructing berms, dikes or roads within the facility. The fee is 1¢ per ton for prospecting or mining waste, including tailing solids, sludge or waste rock.

**Hazardous Spill Reimbursement.** When DNR cleans up hazardous substances spills with state funds, it seeks compensation from responsible parties. The compensation is deposited in the environmental fund. DNR may also recover its costs of remedying adverse effects upon the waters of the state resulting from the unlawful discharge or deposit of pollutants in the waters.

**Hazardous Waste Generator Fee.** A \$210 base fee plus \$20 per ton is charged to all generators of hazardous waste that are required to report annually to DNR under the state's hazardous waste law. Producers of at least 220 pounds of hazardous waste in any month report annually and pay the fee unless the waste is: (a) recovered for recycling or reuse; (b) leachate being transported to a wastewater treatment plant; or (c) removed from the site as part of an environmental cleanup project. The minimum fee for a single generator is \$125 and the maximum is \$17,000.

**Sanitary Permit Surcharge.** Local governments are required to issue a sanitary permit before a person may install any septic tank or private sewage system. The fee for the sanitary permit must be at least \$61, of which \$20 is sent to the Department of Commerce. In addition to the sanitary permit fee, the local government that issues the permit is required to collect a \$25 groundwater surcharge and pay it to Commerce, which then deposits the surcharge in the environmental fund.

**Well Compensation Tipping Fee.** An owner or operator of a licensed solid or hazardous waste disposal facility collects a well compensation fee of 4¢ per ton of non-mining waste from the generator for payment to the environmental management account.

**Nonmetallic Mining Fees.** Counties were required to enact and administer a nonmetallic mining reclamation ordinance that complies with DNR administrative rules by June 1, 2001. All 71 counties that were required to adopt an ordinance did so. (Milwaukee County is not required to adopt an ordinance because all municipalities within the county with nonmetallic mines adopted ordinances.) Approximately 25 towns, villages and cities enacted and are administering ordinances. DNR would administer and enforces nonmetallic mining reclamation requirements if a county did not adopt an ordinance. A county or municipality with an ordinance collects annual fees to cover the local and DNR costs of administering the program. DNR's share of the fees, established in administrative rule, equals \$30 to \$150, depending on the mine size in unreclaimed acres. The counties and municipalities collect DNR's share of fees and pay them to DNR for deposit in the environmental fund.

**Environmental Assessment.** When a court imposes a fine or forfeiture for violation of administrative rules or DNR orders related to pollution discharge, drinking water or septic tank statutes, it also imposes an environmental assessment. The court transfers the assessments to DNR and DNR deposits in the environmental fund. The assessment is equal to 10% of the fine or forfeiture. Fifty percent of the assessments are deposited in the University of Wisconsin System's environmental education appropriation to fund environmental education grants. While Table 6 shows the total amount of environmental assessment revenue, half of the amount is statutorily designated to be used solely for UW System environmental education grants.

**Land Disposal Permit.** Persons who discharge certain pollutants into the waters of the state are required to obtain a water pollutant discharge elimination system permit from DNR. The permit holder is also required to pay a \$100 annual groundwater fee to DNR if the permittee discharges effluent on land or produces sludge from a treatment work that is disposed of on land. The permittee is required to pay a \$200 annual groundwater fee if the permittee discharges effluent on land and disposes of sludge from a treatment work on land.

**Septic System Servicing Fee.** Persons who remove and dispose of septage from septic tanks, soil absorption fields, holding tanks, grease traps or privies must pay DNR a septic servicing groundwater fee of \$100 for a two-year period. DNR deposits the fee in the environmental management account. In addition, DNR collects program revenue fees of \$50 per resident servicing vehicle for two years.

**Bulk Tank Surcharge.** Persons must receive approval from Commerce of plans for installation of or change in the operation of a previously approved installation for the storage, handling or use of flammable or combustible liquids. In addition to any plan review fees, a groundwater fee of \$100 per plan review submittal for tanks with a capacity of 1,000 gallons or more is collected and deposited in the environmental fund.

**Environmental Repair Base Fee and Surcharge.** Owners of approved solid waste facilities do not pay a base fee into the environmental fund. There are two different annual base fees for nonapproved facilities. If the owner of a nonapproved facility has signed an agreement with DNR to close the landfill on or before July 1, 1999, the annual base fee is \$100. If no closure agreement has been signed, the annual base fee is \$1,000. The amount of the base fee is deducted from the tipping fees for nonapproved facilities described previously. Nonapproved facilities with a closure agreement pay a fee of

1.875¢ per ton of solid non-hazardous waste or 2.25¢ per ton without a closure agreement.

**Civil Action Damages.** The fund receives compensation resulting from court ordered payments by responsible parties for specific cleanup activities.

**Cooperative Remedial Action.** DNR is authorized to seek and receive voluntary contributions of funds from a municipality or any other public or private source for all or part of the costs of remedying environmental contamination if the activities being funded are part of a cooperative effort by DNR and the person providing the funds, to remedy the contamination. Any funds received are deposited into the environmental fund. Any cooperative remedial action revenues may only be used for the activities agreed on by DNR and the person providing the funds.

**Investment Income.** Interest earned on state investments is distributed to various funds, including the environmental fund, based on its monthly cash balance. Any interest is credited to the fund for use in cleanup and administrative activities of the program.

### **Program Revenues**

DNR is authorized to assess and collect fees to offset the costs for DNR activities related to approving requests for certain exemptions from future liability for cleanup of contaminated property.

Administrative rule NR 750, effective March 1, 1996, includes a system of hourly fees to be paid by a voluntary party who seeks an exemption from liability or limit on future remediation costs. The initial fees include a non-refundable application fee of \$250 and an advance deposit to cover DNR oversight and review, which is \$1,000 if the property is less than one acre or \$3,000 if the property is one acre or greater. DNR must return

any amount in excess of DNR's oversight costs when the Department's review activities are completed. If the advance deposit is depleted and additional DNR review is needed, DNR is authorized to bill applicants quarterly according to an hourly rate based on the average hourly wages of program staff, fringe benefits and associated costs.

The hourly billing rate is \$75 per hour in 2004 and can be recalculated annually. (The fee was initially \$55 per hour in 1996.) After DNR approves a final remedial design, an applicant can choose to cover remaining DNR review costs, including DNR issuance of a certificate of completion, by either continuing quarterly billing or paying a final fee that equals 40% of the total DNR oversight costs incurred up to and including the approved final remedial design.

Since September, 1998, administrative rule NR 749 has contained a fee schedule of fixed fee amounts for a number of services provided by DNR to persons who request certain departmental assistance. Fees authorized in NR 749 offset the costs for much of the technical and redevelopment assistance provided by DNR. Persons who request the voluntary party exemption would pay the NR 750 hourly fees instead of the NR 749 fixed fees.

When a person requests that DNR review certain documents, the person must pay the applicable flat fee. When the NR 700 rules require that a document be submitted to DNR, but the person does not specifically request review of the document, then no fee is required.

Examples of types of requests for which a fee is charged under NR 749 are: (a) issuance of a case closure letter that provides the DNR's determination that, based on information available at the time of the department's review, no further action is necessary after a site investigation and cleanup has been completed; (b) issuance of an off-site letter that clarifies who is not responsible when

contamination is migrating on to a property from an off-site source; (c) approval of the use of site specific soil cleanup standards; (d) issuance of a no further action letter for a spill site where an immediate action was undertaken; (e) issuance of a letter to clarify liability for site-specific matters related to the environmental pollution and remediation of a property; (f) issuance of a letter to a lender explaining the potential liability associated with acquiring a contaminated property; and (g) negotiation of an agreement containing a schedule for conducting non-emergency actions with a person who possesses or controls a hazardous substance that was discharged or who caused the discharge.

In 2002-03 and 2003-04, most revenues collected were from a \$750 fee for issuance of case closure letters, many of which were for PECFA-eligible petroleum-contaminated sites. DNR has collected revenues from NR 750 and NR 749 fees of \$4,693,100 as of June 30, 2004, for deposit in a program revenue account that funds DNR staff who administer the liability exemption provisions.

DNR is authorized \$961,500 PR and 12.0 PR positions funded from the fees in 2004-05. The program revenues included \$777,900 in 2002-03 and \$766,900 in 2003-04.

In addition to the fees collected related to liability exemptions, DNR collects fees related to adding sites to an online geographic information system (GIS) registry of sites approved for closure where a groundwater enforcement standard is exceeded (effective November 1, 2001) or closed with residual soil contamination (effective August 1, 2002). The fee is \$250 for adding sites with groundwater contamination and \$200 for adding sites with soil contamination to the GIS registry. The groundwater GIS registry fees are deposited in an Air and Waste Division program revenue account for general program operations of the Division. The soil GIS registry fees are deposited in the program revenue account for remediation and redevelopment and are included in the revenues in the previous paragraph. The groundwater GIS fees totaled \$209,800 in 2002-03 and \$160,100 in 2003-04.

PROGRAMS ADMINISTERED BY OTHER STATE AGENCIES

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**Brownfields Grant Program**

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The Department of Commerce administers the brownfields grant program, which was created in 1997 Wisconsin Act 27 to provide financial assistance for brownfields redevelopment and related environmental remediation projects. Grants can be used to fund the costs of brownfields redevelopment projects and associated environmental remediation activities. For purposes of the brownfields grant program, "brownfields" are abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

In the 2003-05 biennium, \$14 million is provided for brownfields grants from the environmental management account of the environmental fund. This includes \$7 million in each of 2003-04 and 2004-05. [Further information about the program can be found in the Legislative Fiscal Bureau Informational Paper entitled, "State Economic Development Programs Administered by the Department of Commerce."]

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**Agricultural Chemical Cleanup Program**

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The Department of Agriculture, Trade and Consumer Protection administers the agricultural chemical cleanup program, which was created in 1993 Wisconsin Act 16. The act transferred responsibility for the investigation and remediation of agricultural chemical spills from DNR to DATCP. The act also established a grant program to fund a portion of cleanup costs and increased current DATCP pesticide and fertilizer fees to partially fund the program. 1997 Wisconsin Act 27 split agrichemical revenues into base fees deposited to the agrichemical management (ACM) fund and surcharges deposited to the agricultural chemical cleanup program (ACCP) fund. [Further information about the program can be found in the Legislative Fiscal Bureau Informational Paper entitled, "Agricultural Chemical Fees and Programs."]

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## Appendices

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Four appendices provide additional information about contaminated land cleanup programs in Wisconsin. These include:

- Appendix I lists the Superfund sites in Wisconsin and shows the status of cleanup actions.
- Appendix II lists the state-funded response projects in Wisconsin where cleanup is funded by the segregated environmental fund.
- Appendix III lists the DNR brownfield site assessment grants awarded as of January 1, 2005.
- Appendix IV lists appropriations from the environmental management account of the environmental fund during 2003-05.

## APPENDIX I

### Superfund Site Status in Wisconsin (December, 2004)

<u>Wisconsin Sites on EPA's National Priority List (NPL)</u>	<u>Municipality</u>	<u>County</u>	<u>Funding</u>	<u>Status</u>
Ashland NSP*	Ashland	Ashland	PRP	RI/FS
Better Brite Chrome & Zinc*	De Pere	Brown	SUPERFUND	O&M
Pentawood Products	Daniels, Town	Burnett	SUPERFUND	O&M
Schmalz Landfill	Harrison	Calumet	SUPERFUND	O&M
Hagen Farm	Stoughton	Dane	PRP	O&M
City Disposal Corp Landfill	Dunn, Town	Dane	PRP	O&M
Stoughton City Landfill	Stoughton	Dane	SUPERFUND	O&M
Madison Metro Sludge Lagoons	Madison	Dane	PRP	O&M
Refuse Hideaway	Middleton	Dane	SUPERFUND	O&M
Oconomowoc Electroplating Co.	Ashippun	Dodge	SUPERFUND	O&M
Hechimovich Landfill*	Williamston	Dodge	PRP	O&M
Eau Claire Municipal Well Field	Eau Claire	Eau Claire	SUPERFUND	O&M
National Presto Industries	Eau Claire	Eau Claire	PRP	O&M
City of Ripon Landfill*	Ripon	Fond du Lac	PRP	O&M **
Algoma, City of, Landfill	Algoma	Kewaunee	PRP	O&M
Onalaska Municipal Landfill*	Onalaska	La Crosse	SUPERFUND	O&M
Lemberger Fly Ash Landfill	Whitelaw	Manitowoc	PRP	O&M
Lemberger Transport/Recycling	Whitelaw	Manitowoc	PRP	O&M
Mid-State Disposal Inc. Landfill	Cleveland	Marathon	PRP	O&M
Wausau, City of, Water Supply	Wausau	Marathon	PRP	O&M
Spickler Landfill	Spencer	Marathon	PRP	O&M
Fadowski Drum Disposal Site	Franklin	Milwaukee	PRP	O&M
Moss-American (Kerr McGee Oil)	Milwaukee	Milwaukee	PRP	RD/RA
Tomah Armory	Tomah	Monroe	PRP	O&M
Tomah Sanitary Landfill	Tomah	Monroe	PRP	O&M
N.W. Mauthe Co.	Appleton	Outagamie	SUPERFUND	O&M
Hunts Disposal/Caledonia Landfill	Caledonia	Racine	PRP	O&M
Janesville Ash Beds	Janesville	Rock	PRP	O&M
Janesville Old Landfill	Janesville	Rock	PRP	O&M
Sauk County Landfill*	Excelsior	Sauk	PRP	O&M
Kohler Co. Landfill*	Kohler	Sheboygan	PRP	O&M
Sheboygan River & Harbor	Sheboygan	Sheboygan	PRP	RD
Scrap Processing Inc.-Potaczek	Medford	Taylor	SUPERFUND	O&M
Delevan Municipal Well No. 4*	Delevan	Walworth	PRP	O&M
Waste Management of WI-Brookfield*	Brookfield	Waukesha	PRP	O&M **
Lauer I Sanitary Landfill (Boundary Road) *	Menomonee Falls	Waukesha	PRP	O&M
Master Disposal Service Landfill	Brookfield	Waukesha	PRP	O&M
Muskego Sanitary Landfill	Muskego	Waukesha	PRP	O&M

PRP—Potential Responsible Party; RI/FS--Remedial Investigation/Feasibility Study; RD--Remedial Design; RA—Remedial Action; O&M—Operation and Maintenance.

\* Designates DNR lead; all others, EPA lead.

\*\* Site conditions are being re-evaluated and the status may change in the future.

## APPENDIX II

### State-Funded Response Actions Funded by the Wisconsin Environmental Fund as of December, 2004

#### **Ashland**

Ashland NSP Coal Gasification  
Shroeder Lumber/Kreher Park

#### **Barron**

Lemler Landfill  
Rice Lake Landfill

#### **Bayfield**

Barksdale Dump

#### **Brown**

H&R Landfill  
Better Brite Chrome Shop  
Better Brite Zinc Shop  
Scray's Hill

#### **Burnett**

Piotrowski  
Village of Webster Water Supply  
Penta Wood Products

#### **Calumet**

Abhold's Garage  
City of Chilton Well #5  
Schmalz Landfill

#### **Chippewa**

North Eau Claire  
Better Brite Chippewa Falls  
Rihn Oil

#### **Clark**

Granton  
Neillsville Foundry  
Town of Chili  
Arlene's Restaurant

#### **Columbia**

Ken La Grange  
Glacier Oil  
Charles Matthews

#### **Crawford**

Bell Center

#### **Dane**

Deerfield  
Refuse Hideaway Landfill  
Stoughton Landfill  
New Pinery Road  
Rimrock Road Well  
Watts/Seybold Road  
McFarland Terminal Drive

#### **Dane (cont.)**

Rimrock Road Volatile Organic  
Compounds  
Town of Madison-Fish Hatchery  
Madison First Street Garage  
Madison Municipal Well #3  
Wade Residence

#### **Dodge**

Oconomowoc Electroplating  
Davy Creek  
Mayville Iron & Coke  
Hechimovich

#### **Door**

Door County Lead Arsenic Mixing  
Stations

#### **Douglas**

Solon Springs  
Superior Wood Systems  
Newton Creek  
Hog Island Inlet

#### **Eau Claire**

City of Augusta  
Eastenson Salvage  
Eau Claire Municipal Well Field  
Eau Claire Lead Site

#### **Fond du Lac**

Waupun Public Water Supply  
Fond du Lac #12  
QuicFrez  
Otto Stiedaman Property

#### **Grant**

Ellenboro Store

#### **Green**

Leck Property

#### **Iowa**

Dodgeville Water Supply  
Mineral Point Roaster Piles

#### **Jackson**

Home Oil  
Melrose Well #3  
Village of Merrilan Water Supply

#### **Jefferson**

Sanitary Transfer and Landfill

#### **Juneau**

Hustler Hardware

#### **Kenosha**

Frost Manufacturing

#### **Kewaunee**

Kewaunee Marsh

#### **La Crosse**

Holmen I and Holmen II  
Lacrosse Water Supply  
Onalaska Municipal Landfill  
Tarco South, Onalaska  
National Auto Wrecking

#### **Lafayette**

New Diggings

#### **Langlade**

Former Langlade Oil Company

#### **Lincoln**

Tomahawk Tissues  
Koch Dry Cleaners

#### **Manitowoc**

Kasson Cheese  
Lemberger Transport and Recycling  
Two Rivers Petroleum  
Manitowoc Two Rivers  
Trichloroethylene

#### **Marathon**

Town of Weston-Mesker #2 Well  
Gorski Landfill  
Town of Stettin  
Town of Weston  
Holtz-Krause Landfill (mixed funding)  
City of Wausau/Marathon Electric  
Landfill  
Mid-State Disposal Landfill  
Standard Container  
Weisenberger Tie and Lumber  
Murray Machine  
Halder Water Supply  
Elderon Water Supply  
Abbotsford Perchloroethylene  
Village of Halder  
Unity Auto Mart

## APPENDIX II (continued)

### State-Funded Response Actions Funded by the Wisconsin Environmental Fund as of December, 2004

#### **Marinette**

Dunbar  
American Graphics/FLS Graphics  
Leo Tucker Salvage Yard  
Fairgrounds Road/Cedar Street  
Wausaukee Well #2  
Boehm Property

#### **Milwaukee**

Blue Hole Landfill  
3033 W. Walnut; Hydro-platers  
Lubricant, Inc.  
BOC Property  
Betz Trust  
Custom Plating  
A-1 Bumper  
Presidio  
Mobile Blasting Off-Site Investigation  
Mobile Blasting Remediation  
Moss American

#### **Monroe**

Ashwander Site  
Wittig Oil  
Tomah Well #5  
Tomah Well #8

#### **Oconto**

Lakewood Water Supply  
New Lindwood  
Peterson Petroleum

#### **Oneida**

Minocqua Water Supply  
Rhineland Landfill  
Rhineland Lincoln Street  
Herrick Well

#### **Outagamie**

Wanglin Barrel  
Wisconsin Chromium  
Brad Porter Well  
Midwest Plating  
Kaphingst Property  
N W Mauthe

#### **Ozaukee**

Cedarburg Water Supply  
Grafton Water Supply  
Cedar Creek

#### **Polk**

Dan Roth Property  
Thompson Machine  
Amery Landfill  
Osceola Creek Millpond

#### **Portage**

Amherst Perchloroethylene

#### **Price**

Flambeau Garage

#### **Racine**

Tappa Property  
City of Racine Brownfields Pilot  
Golden Books/Clint's Auto Salvage

#### **Rock**

Dwyer Fire  
Edgerton Sand and Gravel  
Rock Paint and Chemical  
Riverside Plating  
Borgerding

#### **St. Croix**

Junker Landfill  
Trout Brook  
Town of Warren

#### **Sawyer**

Price Rite Soil Vapor Extraction  
Village of Couderay Site

#### **Sheboygan**

Sheboygan Manufacturer Gas/Camp  
Marina

#### **Taylor**

Doberstein  
Village of Donald Well  
Scrap Processing

#### **Trempealeau**

Village of Arcadia Water Supply

#### **Vernon**

Viroqua Well  
Westby Drycleaners

#### **Vilas**

Boulder Junction

#### **Walworth**

Former Getzen Site  
Elkhorn Metal Finishers

#### **Washburn**

Beaver Brook Water Supply Phase I &  
II  
Springbrook  
Sarona

#### **Washington**

West Bend Water Supply  
Town of Jackson Garage

#### **Waukesha**

Barrett Landfill  
Delafield Sanitary Transfer  
Waukesha West Avenue Landfill

#### **Waupaca**

Waupaca Well #4

#### **Waushara**

Union State Bank Wautoma

#### **Winnebago**

Fox River Risk Assessment  
Oshkosh North  
Smedena  
Panzen Transfer  
Leo's Service  
Shilobrit Cleaners, Oshkosh  
Shilobrit Cleaners, Neenah  
American Quality Fibers  
Moder Well

#### **Wood**

Luchterhand Disposal  
Pittsville Well  
Food Tree

#### **No. Central District**

Clandestine Methcathinone (CAT)  
Labs

#### **Statewide**

Statewide Pesticide Study  
Statewide Soil Standard Criteria  
Modeling  
Statewide Natural Attenuation Study  
Statewide Clean Soils Sites  
Statewide Closure Protocol Study

## APPENDIX III

### DNR Brownfield Site Assessment Grant Awards As of January 1, 2005

<u>County</u>	<u>Recipient</u>	<u>Number of Grants</u>	<u>Grant Amount</u>	<u>County</u>	<u>Recipient</u>	<u>Number of Grants</u>	<u>Grant Amount</u>
Adams	Adams County	1	\$29,990	La Crosse	Onalaska, City	1	\$11,760
Ashland	Ashland, City	4	190,000	Manitowoc	Manitowoc, City	2	59,920
Ashland	Mellen, City	1	30,000	Manitowoc	Mishicot, Village	1	14,157
Barron	Barron, County	1	29,150	Marathon	Marathon County	1	15,000
Brown	Ashwaubenon, CDA	2	60,000	Marathon	Hamburg, Town	1	21,000
Brown	Ashwaubenon, Village	1	98,490	Marathon	Wausau, City	2	130,000
Brown	Ledgeview, Town	1	8,975	Marinette	Marinette, City	1	100,000
Calumet	Chilton, City	1	29,900	Marinette	Marinette, County	1	30,000
Chippewa	Chippewa County	2	53,000	Marquette	Neshkoro, Village	1	26,000
Chippewa	Chippewa Falls, City	2	60,000	Marquette	Shields, Town	1	30,000
Clark	Loyal, City	1	16,000	Milwaukee	Brown Deer, CDA	1	39,000
Columbia	Columbus, City	1	29,000	Milwaukee	Cudahy, City	4	94,760
Columbia	Wisconsin Dells, City	1	65,979	Milwaukee	Glendale, CDA	1	30,000
Crawford	Crawford, County	1	75,000	Milwaukee	Greenfield, City	2	57,450
Dane	DeForest, Village RA	1	20,224	Milwaukee	Milwaukee County	2	60,000
Dane	Madison, Town	2	42,738	Milwaukee	Milwaukee, City	9	257,463
Dane	Oregon, Village	1	29,500	Milwaukee	Milwaukee, City RA	24	636,116
Dane	Sun Prairie, City	1	30,000	Milwaukee	South Milwaukee CDA	1	30,000
Dane	Waunakee, Village	3	160,000	Milwaukee	West Allis, City	11	588,463
Dodge	Mayville, City	1	30,000	Milwaukee	West Milwaukee, Village	1	30,000
Door	Door County	1	12,750	Milwaukee	Whitefish Bay, Village	2	37,518
Door	Sturgeon Bay, City	1	100,000	Oconto	Gillett, City	1	30,000
Douglas	Douglas County	3	83,034	Oconto	Mountain, Town	1	20,000
Douglas	Superior, City	2	24,395	Oconto	Oconto, City	1	30,837
Dunn	Menomonie, City	2	27,800	Oconto	Oconto Falls, City	1	30,000
Eau Claire	Eau Claire, City	1	100,000	Oconto	Suring, Village	2	60,000
Fond du Lac	Fond du Lac, City	1	100,000	Oneida	Oneida, County	1	30,000
Fond du Lac	Fond du Lac, County	1	25,900	Outagamie	Appleton, City RA	2	120,000
Fond du Lac	Lamartine, Town	1	30,000	Outagamie	Kaukauna, City	3	60,667
Forest	Crandon, City	1	25,250	Outagamie	Little Chute, Village	1	7,800
Grant	Boscobel, City	1	30,000	Outagamie	Outagamie, County	2	40,987
Grant	Platteville, City	3	54,160	Outagamie	Seymour, City	1	27,493
Grant	Potosi, Village	1	30,000	Ozaukee	Fredonia, Village	2	40,000
Green	Brodhead, CDA	1	29,500	Ozaukee	Mequon, City	1	30,000
Iowa	Iowa, County	1	29,669	Ozaukee	Ozaukee, County	1	30,000
Iron	Iron County	1	25,000	Ozaukee	Thiensville, Village	1	30,000
Jackson	Black River Falls, City	2	60,000	Polk	Clayton, Village	1	29,375
Jefferson	Jefferson, City	1	30,000	Polk	Dresser, Village	1	26,300
Kenosha	Kenosha, City	2	59,500	Polk	Polk County	1	30,000
La Crosse	Bangor, Village	1	30,000	Portage	Rosholt, Village	1	30,000

**APPENDIX III (continued)**

**DNR Brownfield Site Assessment Grant Awards  
As of January 1, 2005**

<u>County</u>	<u>Recipient</u>	<u>Number of Grants</u>	<u>Grant Amount</u>	<u>County</u>	<u>Recipient</u>	<u>Number of Grants</u>	<u>Grant Amount</u>
Racine	Burlington, City	1	\$30,000	Washburn	Washburn County	1	\$11,428
Racine	Racine, City RA	3	70,000	Waukesha	Elm Grove, Village	1	5,446
Richland	Richland Center, City	4	120,000	Waukesha	New Berlin, City	1	10,000
Rock	Beloit, City	1	4,800	Waukesha	Sussex, Village	1	30,000
Rock	Edgerton, City	1	21,670	Waupaca	Ogdensburg, Village	1	18,000
Rock	Evansville, City	1	30,000	Waupaca	Waupaca, County	2	55,000
Rusk	Rusk, County	1	16,400	Winnebago	Menasha, City	1	30,000
Sauk	Baraboo, City	1	30,000	Winnebago	Neenah, City	1	30,000
Sauk	Washington, Town	1	22,600	Winnebago	Oshkosh, City	3	192,000
Sawyer	Ojibwa, Town	1	29,000	Winnebago	Winnebago County	1	30,000
Sawyer	Sawyer, County	1	26,600	Wood	Marshfield, City	1	30,000
Sheboygan	Sheboygan, City RA	4	177,928	Wood	Pittsville, City	1	20,000
St. Croix	North Hudson, Village	1	2,750	Wood	Wood, County	<u>1</u>	<u>30,000</u>
St. Croix	River Falls, City	1	30,000				
Vernon	Hillsboro, City	1	5,000	Total grants		205	\$6,550,000
Vernon	Vernon, County	2	15,304				
Walworth	Delavan, City	8	270,420				
Walworth	Geneva, Town	1	24,684				
Walworth	Sharon, Village	2	34,000				
Walworth	Whitewater, CDA	1	100,000				

Municipalities located in more than one county are listed under the county in which the largest portion of the property value is located.

RA = Redevelopment Authority  
CDA = Community Development Authority

**APPENDIX IV**

**Appropriations From the Environmental Management Account,  
2002-03 through 2004-05**

	<u>2002-03*</u>	<u>2002-03</u>	<u>2003-04</u>		<u>2004-05</u>	
		<u>Positions</u>	<u>Act 33</u>	<u>Positions</u>	<u>Act 33</u>	<u>Positions</u>
<b>Natural Resources (370)</b>						
(2)(dv) Environmental repair; spills; abandoned containers	\$3,321,300		\$3,321,300		\$2,440,800	
(2)(mq) ** Air and waste operations	4,204,700	59.00	2,511,500	47.00	1,485,800	33.75**
(2)(mr) Brownfields operations	0	0.00	230,300	3.00	230,300	3.00
(2)(du) *** Site specific remediation	2,927,600		4,782,200		4,000,000	
(2)(fq) Indemnification agreements	0		0		0	
(3)(mq) Enforcement and science operations	1,113,900	11.00	1,191,200	11.00	875,400	8.08
(4)(ar) Groundwater management	125,000		125,000		91,900	
(4)(mq) Water operations	2,223,000	22.00	2,319,300	22.00	1,704,400	16.16
(4)(au) *** Cooperative remedial action; contributions	0		0		0	
(4)(av) *** Cooperative remedial action; interest on contributions	800		300		0	
(6)(bs) Household hazardous waste grants	150,000		0		0	
(6)(cr) Well compensation grants	400,000		400,000		294,000	
(6)(et) Brownfield site assessment grants	1,700,000		1,700,000		1,700,000	
(6)(eu) Brownfields green space grants	0		500,000		500,000	
(7)(bq) Remedial action debt service	2,700,000		3,203,700		3,771,600	
(7)(er) Administrative facilities debt service	135,500		217,900		419,400	
(8)(mv) Administration and technology operations	1,614,700	3.44	1,580,600	0.00	1,161,500	0.00
(9)(mv) Customer assistance and external relations operations	551,800	8.10	579,300	7.91	425,700	5.81
<b>Commerce</b>						
143 (1)(qm) Brownfields grant program	7,000,000		7,000,000		7,000,000	
<b>Health and Family Services</b>						
435 (1)(q) Groundwater and air quality standards	386,700	3.50	395,700	3.50	291,200	2.57
<b>Military Affairs</b>						
465 (3)(t) Emergency response training	10,500		10,500		7,700	
<b>University of Wisconsin System</b>						
285 (1)(r) *** Environmental education; environmental assessments	<u>47,500</u>		<u>47,500</u>		<u>47,500</u>	
Total SEG Environmental Management Account Appropriations	\$28,613,000*	107.04	\$30,116,300	94.41	\$26,447,200	69.37

\* 2003 Act 1 reduced the listed 2002-03 appropriations by \$8,950,000 and transferred the same amount to the general fund.

\*\* While 2003 Act 33 reduced this appropriation by \$1,120,000 in each of 2003-04 and 2004-05, it did not make a reduction in the number of authorized positions. DNR may need to ensure that approximately 14 currently authorized SEG positions are vacant in each year to accomplish the required expenditure reduction.

\*\*\* Appropriations are continuing and show the currently estimated revenue that would be available solely for the purposes of the appropriation, rather than the Chapter 20 amount.